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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**PART 10**

**INCOME AND CAPITAL**

**CHAPTER 1**

**General**

**Calculation of income and capital of members of claimant's family and of a polygamous marriage**

**83.**—(1) Subject to paragraph (4), the income and capital of a claimant's partner which by virtue of paragraph 6(2) of Schedule 1 to the Act is to be treated as income and capital of the claimant, is to be calculated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the "claimant" is, except where the context otherwise requires, to be construed, for the purposes of this Part, as if it were a reference to the claimant's partner.

(2) Subject to the following provisions of this Part, the income paid to, or in respect of, and capital of, a child or young person who is a member of the claimant's family is not to be treated as the income or capital of the claimant.

(3) Subject to paragraph (5), where a claimant or the partner of a claimant is married polygamously to two or more members of the claimant's household—

- (a) the claimant is to be treated as possessing capital and income belonging to each such member; and
- (b) the income and capital of that member is to be calculated in accordance with the following provisions of this Part in like manner as for the claimant.

(4) Where at least one member of a couple is aged less than 18 and the applicable amount of the couple falls to be determined under paragraph 1(3)(e), (f), (g), (h) or (i) of Schedule 4 (amounts), the income of the claimant's partner is not to be treated as the income of the claimant to the extent that—

- (a) in the case of a couple where both members are aged less than 18, the amount specified in paragraph 1(3)(c) of that Schedule exceeds the amount specified in paragraph 1(3)(i) of that Schedule; and
- (b) in the case of a couple where only one member is aged less than 18, the amount specified in paragraph 1(3)(a) of that Schedule exceeds the amount which is specified in paragraph 1(3)(h) of that Schedule.

(5) Where a member of a polygamous marriage is a partner aged less than 18 and the amount which applies in respect of that partner under regulation 68(2) (polygamous marriages) is nil, the claimant is not to be treated as possessing the income of that partner to the extent that an amount in respect of that partner would have been included in the applicable amount if the partner had fallen within the circumstances set out in regulation 68(2)(a) or (b).

### **Income of participants in the self-employment route**

84. Chapters 2, 3, 4, 6, 8 and 9 of this Part and regulations 132 to 137, 142 and 143 do not apply to any income which is to be calculated in accordance with Chapter 5 of this Part (participants in the self-employment route).

### **Liabli relative payments**

85. Regulations 91 to 109, 111 to 117 and Chapter 10 of this Part do not apply to any payment which is to be calculated in accordance with Chapter 8 of this Part (liable relatives).

### **Child support**

86. Regulations 91, 93, 94, 104 and 106 to 109 and Chapter 8 of this Part do not apply to any payment which is to be calculated in accordance with Chapter 9 of this Part (child support).

### **Calculation of income and capital of students**

87. The provisions of Chapters 2 to 7 of this Part (income and capital) are to have effect in relation to students and their partners subject to the modifications set out in Chapter 10 of this Part (students).

### **Calculation of income which consists of earnings of participants in exempt work**

88. Notwithstanding the other provisions of this Part, regulations 91(2), 92 to 99 and 108(3) and (4) and Schedule 7 (sums to be disregarded in the calculation of earnings) are to apply to any income which consists of earnings which is to be calculated for the purposes of regulations 45(2) to (4) (exempt work – earnings limits).

### **Calculation of income where pension payments, PPF periodic payments or councillor's allowance payable**

89. Notwithstanding the other provisions of this Part, regulation 94(1) and (6) is to apply for the purposes of calculating the amount of any pension payments, PPF periodic payments or councillor's allowance to which Chapter 2 of Part 9 (deductions from the contributory allowance) applies.