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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 6**

**Other income**

**Notional income – calculation and interpretation**

**109.**—(1) Where a claimant is treated as possessing any income under regulation 106 or 107 the foregoing provisions of this Part are to apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which the claimant does possess.

(2) Where a claimant is treated as possessing any earnings under regulation 108(1) or (3) the foregoing provisions of this Part are to apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which the claimant does possess except that paragraph (3) of regulation 96 (calculation of net earnings of employed earners) does not apply and the claimant's net earnings are to be calculated by taking into account the earnings which the claimant is treated as possessing, less—

- (a) where the period over which those earnings are to be taken into account is a year or more, an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the starting rate or, as the case may be, the starting rate and the basic rate of tax in the year of assessment less only the personal allowance to which the claimant is entitled under section 257(1) of the Income and Corporation Taxes Act 1988<sup>(1)</sup> (personal allowance) as is appropriate to the claimant's circumstances;
- (b) where if the period over which those earnings are to be taken into account is less than a year, the earnings to which the starting rate of tax is to be applied and the amount of the personal allowance deductible under this paragraph is to be calculated on a pro rata basis;
- (c) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under section 6(1)(a) of the Contributions and Benefits Act<sup>(2)</sup>, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act<sup>(3)</sup>; and
- (d) one-half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

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(1) 1988 c. 1. Section 257 was substituted by the Finance Act 1988 (c. 39), section 33 and amended by the Income Tax Act 2007 (c. 3), section 1027 and Schedule 1, Part 1, paragraphs 1 and 29(1) and (2) and S.I. 2006/3241.

(2) Section 6 was substituted by the Welfare Reform and Pensions Act 1999 (c. 30), section 73 and paragraph 2 of Schedule 9.

(3) Section 8 was substituted by the National Insurance Contributions Act 2002 (c. 19), section 1(1).