
STATUTORY INSTRUMENTS

2009 No. 2655

**The Social Security (Miscellaneous
Amendments) (No. 4) Regulations 2009**

Amendments to the Employment and Support Allowance Regulations 2008

11.—(1) The Employment and Support Allowance Regulations 2008⁽¹⁾ are amended as follows.

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

(a) for the definition of “enactment”, substitute—

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

(b) at the appropriate places insert the following—

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

““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;”;

““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,

(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 registered provider 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,

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;”.

(3) In regulation 61(3)(i) (failure to take part in a work-focused interview) for “impossible” substitute “impracticable”.

(4) In the headings to regulations 85(2) (child maintenance or liable relative payments), 120(3) (treatment of child maintenance or liable relative payments), 124(4) (calculation of the weekly amount of a child maintenance or liable relative payment) and 125(5) (date on which a child maintenance or liable relative payment is to be treated as paid) omit “child maintenance or”.

(5) In regulation 85(6) and the heading to Chapter 8(7) of Part 10 (child maintenance and liable relative payments) omit “child maintenance and”.

(6) After regulation 95(2)(e) (earnings of employed earners) add—

“(f) any payment in respect of expenses arising out of the claimant’s participation in a service user group.”.

(7) In regulation 104(1) (calculation of income other than earnings) after “earnings” insert “and regulation 93(3) and (4) (date on which income is treated as paid)”.

(8) In regulation 106 (notional income - deprivation and income on application)—

(a) after paragraph (2)(g) insert—

“(ga) any sum to which paragraph (9) applies;”;

(b) after paragraph (8) add—

“(9) Paragraphs (1) and (2) do not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant’s participation in a service user group.”.

(9) In regulation 107 (notional income - income due to be paid or income paid to or in respect of a third party) after paragraph (7) add—

“(8) Paragraphs (1), (3) and (4) do not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant’s participation in a service user group.”.

(10) In regulation 108 (notional income - other income) after paragraph (4) add—

“(5) Paragraphs (1) and (3) do not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant’s participation in a service user group.”.

(11) In regulation 119 (interpretation)—

(a) omit the definition of “child maintenance”;

(2) Relevant amending instrument is [S.I. 2008/2428](#).

(3) Relevant amending instrument is [S.I. 2008/2428](#).

(4) Relevant amending instrument is [S.I. 2008/2428](#).

(5) Relevant amending instrument is [S.I. 2008/2428](#).

(6) Relevant amending instrument is [S.I. 2008/2428](#).

(7) Relevant amending instrument is [S.I. 2008/2428](#).

- (b) in the definition of “payment”—
 - (i) in paragraph (d)(i)(8) for “family” substitute “partner or is made or derived from a person falling within sub-paragraph (d) of the definition of liable relative”;
 - (ii) after paragraph (g) add—
 - “(h) to which paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) applies.”;
 - (c) in paragraph (c) of the definition of “periodical payment” (9) omit “, after the appropriate disregard under paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) has been applied to it.”.
- (12) In regulation 120(10) (treatment of child maintenance or liable relative payments) omit “and paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings)”.
- (13) In regulation 123(11) (period over which payments other than periodical payments are to be taken into account)—
- (a) in paragraph (3) omit sub-paragraph (b) and the preceding “and”;
 - (b) in paragraph (10) omit “and, where applicable, the maximum disregard under paragraph 60 of Schedule 8”.
- (14) In regulation 131(1) (interpretation) in paragraph (a) of the definition of “access funds”—
- (a) for “7” substitute “68”;
 - (b) omit “and described as “learner support funds” or grants made under section 68 of that Act”.
- (15) In regulation 153(1) (absence to receive medical treatment) omit sub-paragraph (e).
- (16) In Part 1 (prescribed amounts) of Schedule 4 (amounts) paragraph 1(3)(b)(i) and (ii), in column (1) of the table, for “had they not been members” substitute “if that other member had not been a member”.
- (17) In Schedule 6 (housing costs)—
- (a) in paragraph 5(13) at the appropriate place insert—
 - ““period of study” has the meaning given in regulation 131 (interpretation);”;
 - (b) in paragraph 15(2) for “has ceased” substitute “ceases on or before 11th April 2010”.
- (18) In Schedule 7 (sums to be disregarded in the calculation of earnings)—
- (a) in paragraph 1(1)(b) for “regulation 95(1)(e) (earnings of employed earners)” substitute “sub-paragraph (2)(a) or (b)(ii)”;
 - (b) for paragraph 1(2)(a) substitute—
 - “(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”;
 - (c) in paragraph 2(1) for “regulation 95(1)(e)” substitute “paragraph 1(2)(a) or (b)(ii)”.
- (19) In Schedule 8 (sums to be disregarded in the calculation of income other than earnings)—
- (a) after paragraph 2 insert—

(8) Substituted by [S.I. 2008/2428](#).

(9) Relevant amending instrument is [S.I. 2008/2428](#).

(10) Relevant amending instrument is [S.I. 2008/2428](#).

(11) Substituted by [S.I. 2008/2428](#).

“**2A.** Any payment in respect of expenses arising out of the claimant’s participation in a service user group.”;

(b) in paragraph 17(d)(**12**)—

(i) for “payment under the Armed Forces Pension Scheme 1975 or the Armed Forces Pension Scheme 2005” substitute “pension or payment falling within article 31(1) (a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005”;

(ii) for “the pension payable under either of those schemes” substitute “that pension or payment”;

(iii) for the last “the” substitute “any”;

(c) in paragraph 26(1)(b) after “order” insert—

“, or in Scotland section 50 of the Children Act 1975 (payments towards maintenance of children)”;

(d) for paragraph 60, substitute—

“**60.**—(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the claimant’s family, except where the person making the payment is the claimant or the claimant’s partner.

(2) In sub-paragraph (1)—

“child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

(a) the Child Support Act 1991;

(b) the Child Support (Northern Ireland) Order 1991;

(c) a court order;

(d) a consent order;

(e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;

“liable relative” means a person listed in regulation 119 (interpretation) other than a person falling within sub-paragraph (d) of that definition.”.