

---

STATUTORY INSTRUMENTS

---

**2013 No. 379**

**The Employment and Support Allowance Regulations 2013**

**PART 12**

Disqualification

**Exceptions from disqualification for imprisonment**

**96.**—(1) Notwithstanding section 18(4)(b) of the Act <sup>M1</sup>, a claimant is not disqualified for receiving an employment and support allowance for any period during which that claimant is undergoing imprisonment or detention in legal custody—

- (a) in connection with a charge brought or intended to be brought against the claimant in criminal proceedings;
- (b) pursuant to any sentence of a court in criminal proceedings; or
- (c) pursuant to any order for detention made by a court in criminal proceedings,

unless paragraph (2) applies.

(2) This paragraph applies where—

- (a) a penalty is imposed on the claimant at the conclusion of the proceedings referred to in paragraph (1); or
- (b) in the case of default of payment of a sum adjudged to be paid on conviction, a penalty is imposed in respect of such default.

(3) Notwithstanding section 18(4)(b) of the Act, a claimant (“C”) is not to be disqualified for receiving an employment and support allowance, for any period during which C is undergoing detention in legal custody after the conclusion of criminal proceedings if it is a period during which C is detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless C satisfies either of the following conditions.

(4) The first condition is that—

- (a) C is being detained under section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentences of imprisonment etc); and
- (b) in any case where there is in relation to C a release date within the meaning of section 50(3) of that Act, C is being detained on or before the day which the Secretary of State certifies to be that release date.

(5) The second condition is that C is being detained under—

- (a) section 59A of the Criminal Procedure (Scotland) Act 1995 (hospital direction); or
- (b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment of mental disorder).

(6) For the purposes of this regulation—

- (a) “court” means any court in the United Kingdom, the Channel Islands or the Isle of Man or in any place to which the Colonial Prisoners Removal Act 1884 <sup>M2</sup> applies or any naval court-martial, army court-martial or air force court-martial within the meaning of the Courts-Martial (Appeals) Act 1968 <sup>M3</sup> or the Courts-Martial Appeal Court;
- (b) “hospital or similar institution” means any place (not being a prison, a young offender institution, a secure training centre, secure accommodation in a children's home<sup>F1</sup>, a place at which a secure accommodation service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 is being provided] or a remand centre, and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
- (c) “penalty” means a sentence of imprisonment or detention under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 <sup>M4</sup><sup>F2</sup> or section 250 <sup>F3</sup>, 252A] or 259 of the Sentencing Code], a detention and training order under <sup>F4</sup>section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 <sup>M5</sup> or Chapter 2 of Part 10 of the Sentencing Code], a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 <sup>M6</sup> or an extended sentence under section 228 of that Act <sup>M7</sup> or, in Scotland, under section 205, 207 or 208 of the Criminal Procedure (Scotland) Act 1995 <sup>M8</sup>;
- (d) in relation to a person who is liable to be detained in Great Britain as a result of any order made under the Colonial Prisoners Removal Act 1884, references to a prison must be construed as including references to a prison within the meaning of that Act;
- (e) criminal proceedings against any person must be deemed to be concluded upon that person being found insane in those proceedings so that the person cannot be tried or that person's trial cannot proceed.

(7) Where a claimant outside Great Britain is undergoing imprisonment or detention in legal custody and, in similar circumstances in Great Britain, the claimant would, by virtue of this regulation, not have been disqualified for receiving an employment and support allowance, the claimant is not disqualified for receiving that allowance by reason only of the imprisonment or detention.

#### Textual Amendments

- F1** Words in reg. 96(6)(b) inserted (2.4.2018) by [The Social Security and Child Support \(Regulation and Inspection of Social Care \(Wales\) Act 2016\) \(Consequential Provision\) Regulations 2018 \(S.I. 2018/228\)](#), regs. 1, **15(2)**
- F2** Words in reg. 96(6)(c) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 24 para. 413(a)** (with [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F3** Word in reg. 96(6)(c) inserted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(1)(i), **Sch. 13 para. 31**
- F4** Words in reg. 96(6)(c) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 24 para. 413(b)** (with [Sch. 27](#)); S.I. 2020/1236, reg. 2

#### Marginal Citations

- M1** Section 18(4) was amended by paragraph 26 of Schedule 3 to the Welfare Reform Act 2012.
- M2** 1884 c.31.
- M3** 1968 c.20.
- M4** 2000 c.6. Section 90 was amended by section 60 of the [Criminal Justice and Court Services Act 2000 \(c.43\)](#). Section 91 was amended by paragraph 181 of Schedule 7 to the Criminal Justice and Court Services Act 2000, paragraph 43 of Schedule 6 to the [Sexual Offences Act 2003 \(c.42\)](#), **section 289** of, and Schedule 7 and paragraph 110 of Schedule 32 to, the [Criminal Justice Act 2003 \(c.44\)](#), **paragraph**

7 of Schedule 1 to the [Violent Crime Reduction Act 2006 \(c.38\)](#) and paragraph 56 of Schedule 4 to the [Criminal Justice and Immigration Act 2008 \(c.4\)](#).

- M5** Section 100 was amended by paragraph 111 of Schedule 32 to the Criminal Justice Act 2003 and paragraph 184 of Schedule 7 to the Criminal Justice and Court Services Act 2000.
- M6** Section 226 was amended by section 14 of the Criminal Justice and Immigration Act 2008.
- M7** Section 228 was amended by section 16 of, and Schedule 28 to, the Criminal Justice and Immigration Act 2008.
- M8** 1995 c. 46. Section 205 was amended by section 2(1) of the [Convention Rights \(Compliance\) \(Scotland\) Act 2001 \(asp 7\)](#). Section 207 was amended by paragraph 4(3) of the [Violent Crime Reduction Act 2006 \(c.38\)](#) and section 6(4) of, and paragraph 21(25) of Schedule 1 to, the [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#). Section 208 was amended by section 290(3) of the [Criminal Justice Act 2003 \(c.44\)](#), [section 10\(3\)](#) and (4) of the [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [section 49](#) of the [Violent Crime Reduction Act 2006](#) and section 21(2) and (3) of the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2013, Section 96.