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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**The Employment and Support Allowance Regulations 2013**

**PART 3**

Conditions of entitlement

**Condition relating to youth – residence or presence**

**12.**—(1) The conditions prescribed for the purposes of paragraph 4(1)(c) of Schedule 1 to the Act as to residence and presence in Great Britain are that the claimant—

- (a) is ordinarily resident in Great Britain;
- (b) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999<sup>(1)</sup> or is a person to whom paragraph (3) applies;
- (c) is present in Great Britain; and
- (d) has been present in Great Britain for a period of, or for periods amounting in aggregate to, not less than 26 weeks in the 52 weeks immediately preceding the relevant benefit week.

(2) For the purposes of paragraph (1), a claimant is to be treated as being resident and present in Great Britain where the claimant is absent from Great Britain by reason only of being—

- (a) the spouse, civil partner, son, daughter, father, father-in-law, mother or mother-in-law of, and living with, a member of Her Majesty's forces who is abroad in that capacity;
- (b) in employment prescribed for the purposes of paragraph 7(1)(c) of Schedule 2 to the Act<sup>(2)</sup> in connection with continental shelf operations; or
- (c) abroad in the capacity of being an aircraft worker or mariner.

(3) This paragraph applies where a person is—

- (a) a member of a family of a national of an European Economic Area state;
- (b) a person who is lawfully working in Great Britain and is a national of a State with which the European Union has concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families;
- (c) a person who is a member of a family of, and living with, a person specified in subparagraph (b); or
- (d) a person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971<sup>(3)</sup> to be responsible for that person's maintenance and accommodation.

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(1) 1999 c.33.

(2) Paragraph 7 was amended by paragraph 26 of Schedule 3 and Schedule 14 to the Welfare Reform Act 2012.

(3) 1971 c.77.

(4) A person is to be treated as having satisfied the residence or presence conditions in paragraph (1) throughout a period of limited capability for work where those conditions are satisfied on the first day of that period of limited capability for work.

(5) In this regulation—

“aircraft worker” means a person who is, or has been, employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

but does not include a person who is in employment as a member of Her Majesty’s forces;

“mariner” means a person who is, or has been, in employment under a contract of service either as a master or other member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mail carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on its voyage,

but does not include a person who is in employment as a member of Her Majesty’s forces.

(6) In the definition of “mariner” in paragraph (5), “passenger” means any person carried on a ship or vessel except—

- (a) a person employed or engaged in any capacity on board the ship or vessel on the business of the ship or vessel; or
- (b) a person on board the ship or vessel either in pursuance of an obligation to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.