

---

STATUTORY INSTRUMENTS

---

**2008 No. 794**

**SOCIAL SECURITY**

**The Employment and Support Allowance Regulations 2008**

*Made - - - - 25th March 2008*

*Laid before Parliament 27th March 2008*

*Coming into force in accordance with regulation 1*

**THE EMPLOYMENT AND SUPPORT  
ALLOWANCE REGULATIONS 2008**

PART 1

1. Citation and commencement
2. Interpretation
3. Rounding of fractions

PART 2

4. The end of the assessment phase
5. The assessment phase – previous claimants
6. The assessment phase – claimants appealing against a decision
7. Circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply

PART 3

8. Relaxation of the first contribution condition
9. Condition relating to youth – claimants aged 20 or over but under 25
10. Condition relating to youth – previous claimants
11. Condition relating to youth – residence or presence
12. Condition relating to youth – full-time education
13. Modification of the relevant benefit year

PART 4

14. Meaning of education

*Status: This is the original version (as it was originally made).*

15. Claimants to be treated as receiving education
16. Claimants not to be treated as receiving education
17. Courses of study
18. Circumstances in which the condition that the claimant is not receiving education does not apply

#### PART 5

19. Determination of limited capability for work
20. Certain claimants to be treated as having limited capability for work
21. Information required for determining capability for work
22. Failure to provide information in relation to limited capability for work
23. Claimant may be called for a medical examination to determine whether the claimant has limited capability for work
24. Matters to be taken into account in determining good cause in relation to regulations 22 or 23
25. Hospital in-patients
26. Claimants receiving certain regular treatment
27. Claimant to be treated as having limited capability for work throughout a day
28. Night workers
29. Exceptional circumstances
30. Conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made
31. Claimant who claims jobseeker's allowance to be treated as not having limited capability for work
32. Certain claimants to be treated as not having limited capability for work
33. Additional circumstances where claimants are to be treated as having limited capability for work

#### PART 6

34. Determination of limited capability for work-related activity
35. Certain claimants to be treated as having limited capability for work-related activity
36. Information required for determining capability for work-related activity
37. Failure to provide information in relation to work-related activity
38. Claimant may be called for a medical examination to determine whether the claimant has limited capability for work-related activity
39. Matters to be taken into account in determining good cause in relation to regulations 37 or 38

#### PART 7

40. A claimant who works to be treated as not entitled to an employment and support allowance
41. Meaning of "remunerative work" for the purposes of paragraph 6(1)(e) of Schedule 1 to the Act
42. Meaning of "remunerative work" for the purposes of paragraph 6(1)(f) of Schedule 1 to the Act
43. Circumstances under which partners of claimants entitled to an income-related allowance are not to be treated as engaged in remunerative work

- 44. Claimants who are treated as not entitled to any allowance at all by reason of regulation 40(1) are to be treated as not having limited capability for work
- 45. Exempt work
- 46. Effect of work on entitlement to contributory allowance where claimant is receiving certain regular treatment

## PART 8

### CHAPTER 1

- 47. Requirement to take part in a work-focused health-related assessment
- 48. Work-focused health-related assessment
- 49. Notification of assessment
- 50. Determination of the place of the work-focused health-related assessment
- 51. Taking part in a work-focused health-related assessment
- 52. Deferral of requirement to take part in a work-focused health-related assessment
- 53. Failure to take part in a work-focused health-related assessment

### CHAPTER 2

- 54. Requirement to take part in a work-focused interview
- 55. Work-focused interview
- 56. Notification of interview
- 57. Taking part in a work-focused interview
- 58. Action plan
- 59. Deferral of requirement to take part in a work-focused interview
- 60. Requirement to take part in a work-focused interview not to apply
- 61. Failure to take part in a work-focused interview
- 62. Contracting out certain functions relating to work-focused interviews

### CHAPTER 3

- 63. Reduction of employment and support allowance
- 64. Cessation of reduction

### CHAPTER 4

- 65. Notification under this Part

### CHAPTER 5

#### the Act

- 66. Modifications of the Act

*Status: This is the original version (as it was originally made).*

## PART 9

### CHAPTER 1

- 67. Prescribed amounts
- 68. Polygamous marriages
- 69. Special cases
- 70. Special cases: supplemental – persons from abroad
- 71. Definition of non-dependant

### CHAPTER 2

- 72. Permanent health insurance
- 73. Councillor's allowance
- 74. Deductions for pension payment and PPF payment
- 75. Payments treated as not being payments to which section 3 applies
- 76. Deductions for councillor's allowance
- 77. Date from which payments are to be taken into account
- 78. Date from which a change in the rate of the payment takes effect
- 79. Calculation of payment made other than weekly

### CHAPTER 3

- 80. Effect of statutory maternity pay on a contributory allowance
- 81. Effect of statutory adoption pay on a contributory allowance
- 82. Effect of additional statutory paternity pay on a contributory allowance

## PART 10

### CHAPTER 1

- 83. Calculation of income and capital of members of claimant's family and of a polygamous marriage
- 84. Income of participants in the self-employment route
- 85. Liable relative payments
- 86. Child support
- 87. Calculation of income and capital of students
- 88. Calculation of income which consists of earnings of participants in exempt work
- 89. Calculation of income where pension payments, PPF periodic payments or councillor's allowance payable

### CHAPTER 2

- 90. Calculation of income
- 91. Calculation of earnings derived from employed earner's employment and income other than earnings

- 92. Calculation of earnings of self-employed earners
- 93. Date on which income is treated as paid
- 94. Calculation of weekly amount of income

### CHAPTER 3

- 95. Earnings of employed earners
- 96. Calculation of net earnings of employed earners

### CHAPTER 4

- 97. Earnings of self-employed earners
- 98. Calculation of net profit of self-employed earners
- 99. Deduction of tax and contributions for self-employed earners

### CHAPTER 5

- 100. Interpretation
- 101. Treatment of gross receipts of participants in the self-employment route
- 102. Calculation of income of participants in the self-employment route
- 103. Deduction in respect of tax for participants in the self-employment route

### CHAPTER 6

- 104. Calculation of income other than earnings
- 105. Capital treated as income
- 106. Notional income – deprivation and income on application
- 107. Notional income – income due to be paid or income paid to or in respect of a third party
- 108. Notional income – other income
- 109. Notional income – calculation and interpretation

### CHAPTER 7

- 110. Capital limit
- 111. Calculation of capital
- 112. Income treated as capital
- 113. Calculation of capital in the United Kingdom
- 114. Calculation of capital outside the United Kingdom
- 115. Notional capital
- 116. Diminishing notional capital rule
- 117. Capital jointly held
- 118. Calculation of tariff income from capital

### CHAPTER 8

- 119. Interpretation

*Status: This is the original version (as it was originally made).*

- 120. Treatment of liable relative payments
- 121. Disregard of payments treated as not relevant income
- 122. Period over which periodical payments are to be taken into account
- 123. Period over which payments other than periodical payments are to be taken into account
- 124. Calculation of the weekly amount of a liable relative payment
- 125. Date on which a liable relative payment is to be treated as paid
- 126. Liable relative payments to be treated as capital

#### CHAPTER 9

- 127. Treatment of child support maintenance
- 128. Calculation of the weekly amount of payments of child support maintenance
- 129. Date on which child support maintenance is to be treated as paid
- 130. Disregard of payments treated as not relevant income

#### CHAPTER 10

- 131. Interpretation
- 132. Calculation of grant income
- 133. Calculation of covenant income where a contribution is assessed
- 134. Calculation of covenant income where no grant income or no contribution is assessed
- 135. Relationships with amounts to be disregarded under Schedule 8
- 136. Other amounts to be disregarded
- 137. Treatment of student loans
- 138. Treatment of payments from access funds
- 139. Treatment of fee loans
- 140. Disregard of contribution
- 141. Further disregard of student's income
- 142. Income treated as capital
- 143. Disregard of changes occurring during summer vacation

#### PART 11

#### CHAPTER 1

- 144. Waiting days
- 145. Linking rules
- 146. Advance awards
- 147. Recovery orders

#### CHAPTER 2

- 148. Work or training beneficiaries
- 149. Linking rules – limited capability for work
- 150. Linking rules – limited capability for work-related activity

### CHAPTER 3

151. Absence from Great Britain
152. Short absence
153. Absence to receive medical treatment
154. Absence in order to receive NHS treatment
155. Absence of member of family of member of Her Majesty's forces

### CHAPTER 4

156. Circumstances in which a person is to be treated as being or not being a member of the household

#### PART 12

157. Disqualification for misconduct etc.
158. Meaning of "person in hardship"
159. Treating a claimant as not having limited capability for work
160. Exceptions from disqualification for imprisonment
161. Suspension of payment of a contributory allowance during imprisonment

#### PART 13

162. Urgent cases
163. Applicable amounts in urgent cases
164. Assessment of income and capital in urgent cases

#### PART 14

165. Entitlement for less than a week – amount of an employment and support allowance payable
166. Relevant week
167. Modification in the calculation of income
168. Reduction in certain cases
169. Payment of a contributory allowance for days of certain regular treatment  
Signature

---

### SCHEDULE 1 — HER MAJESTY'S FORCES

#### PART 1 — Prescribed establishments and organisations

1. Any of the regular naval, military or air forces of...
2. Royal Fleet Reserve.
3. Royal Navy Reserve.
4. Royal Marines Reserve.
5. Army Reserve.
6. Territorial Army.
7. Royal Air Force Reserve.
8. Royal Auxiliary Air Force.
9. The Royal Irish Regiment, to the extent that its members...

*Status: This is the original version (as it was originally made).*

PART 2 — Establishments and organisations of which Her Majesty's forces do not consist

10. Her Majesty's forces are not to be taken to consist...

SCHEDULE 2 — ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK

PART 1 — Physical disabilities

PART 2 — Mental, cognitive and intellectual function assessment

SCHEDULE 3 — ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK-RELATED ACTIVITY

SCHEDULE 4 — AMOUNTS

PART 1 — Prescribed amounts

1. The weekly amounts specified in column (2) in respect of...

PART 2 — Premiums

2. Except as provided in paragraph 4, the weekly premiums specified...

3. An enhanced disability premium in respect of a person is...

4. (1) For the purposes of this Part of this Schedule,...

5. Pensioner premium

6. Severe disability premium

7. Enhanced disability premium

8. Carer premium

9. Persons in receipt of concessionary payments

10. Persons in receipt of benefit

PART 3 — Weekly amount of premiums specified in Part 2

PART 4 — The components

12. The amount of the work-related activity component is £24.00.

13. The amount of the support component is £29.00.

SCHEDULE 5 — SPECIAL CASES

PART 1 — Amounts prescribed for the purposes of section 4(2) of the Act

PART 2 — Amounts prescribed for the purposes of sections 2(1) and 4(2) of the Act

SCHEDULE 6 — HOUSING COSTS

1. Housing costs

2. Remunerative work

3. Previous entitlement to other income-related benefits

4. Circumstances in which a person is liable to meet housing costs

5. Circumstances in which a person is to be treated as occupying a dwelling as the home

6. Housing costs not met

7. Apportionment of housing costs

8. Existing housing costs

9. New housing costs

10. General exclusions from paragraphs 8 and 9

11. The calculation for loans

12. General provisions applying to new and existing housing costs

13. The standard rate

14. Excessive Housing Costs

15. Linking rule

16. Loans on residential property



17. Loans for repairs and improvements to the dwelling occupied as the home
18. Other housing costs
19. Non-dependant deductions
20. Continuity with income support, an income-based jobseeker's allowance or state pension credit

SCHEDULE 7 — SUMS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS

1. (1) In the case of a claimant who has been...
2. (1) In the case of a claimant to whom this...
3. If the claimant's partner has been engaged in remunerative work...
4. In the case of a claimant who has been engaged...
5. In the case of a claimant who is undertaking work...
6. Where regulation 45(2) to (4) applies to the claimant and...
7. (1) In a case to which this paragraph applies, £20;...
8. Notwithstanding the foregoing provisions of this Schedule, where two or...
9. Any earnings derived from employment which are payable in a...
10. Where a payment of earnings is made in a currency...
11. Any earnings which are due to be paid before the...
12. In the case of a claimant who—
13. In the case of a person to whom paragraph (5)...
14. In this Schedule— “part-time employment” means, if the person were...

SCHEDULE 8 — SUMS TO BE DISREGARDED IN THE CALCULATION OF INCOME OTHER THAN EARNINGS

1. Any amount paid by way of tax on income which...
2. Any payment in respect of any expenses incurred, or to...
3. In the case of employment as an employed earner, any...
4. In the case of a payment under Parts 11 to...
5. In Northern Ireland, in the case of a payment under...
6. Any guardian's allowance.
7. (1) Any child tax credit. (2) Any child benefit.
8. Any mobility component of disability living allowance.
9. Any concessionary payment made to compensate for the non-payment of —...
10. Any mobility supplement or any payment intended to compensate for...
11. Any attendance allowance or the care component of disability living...
12. Any payment to the claimant as holder of the Victoria...
13. (1) Any payment— (a) by way of an education maintenance...
14. Any payment made to the claimant by way of a...
15. (1) Any payment made pursuant to section 2 of the...
16. (1) Subject to sub-paragraph (2) and paragraph 41, any relevant...
17. Subject to paragraphs 39 and 40, £10 of any of...
18. Where a claimant receives income under an annuity purchased with...
19. Any payment made to the claimant by a person who...
20. Where the claimant occupies a dwelling as the claimant's home...
21. Where the claimant occupies a dwelling as the claimant's home...
22. (1) Subject to sub-paragraphs (2) and (3), except where regulation...
23. (1) Any income derived from capital to which the claimant...
24. Any income which is payable in a country outside the...
25. Where a payment of income is made in a currency...
26. (1) Any payment made to the claimant in respect of...
27. In the case of a claimant who has a child...

*Status: This is the original version (as it was originally made).*

28. Any payment made by a local authority to the claimant...
29. Any payment made to the claimant or the claimant's partner...
30. (1) Any payment made by a local authority in accordance...
31. (1) Subject to sub-paragraph (2) any payment received under an...
32. (1) Except where paragraph 31 (or 33) applies, and subject...
33. (1) Subject to sub-paragraph (2), any payment received under an...
34. (1) Subject to sub-paragraphs (2) and (3), in the case...
35. Any social fund payment made pursuant to Part 8 of...
36. Any payment of income which under regulation 112 (income treated...
37. Any payment under Part 10 of the Contributions and Benefits...
38. Any payment which is due to be paid before the...
39. The total of a claimant's income or, if the claimant...
40. Notwithstanding paragraph 39 where two or more payments of the...
41. (1) Any payment made under the Macfarlane Trust, the Macfarlane...
42. Any payment made by the Secretary of State to compensate...
43. Any payment made to a juror or a witness in...
44. Any payment in consequence of a reduction of council tax...
45. (1) Any payment or repayment made— (a) as respects England,...
46. Any payment made to such persons entitled to receive benefits...
47. Any payment made either by the Secretary of State for...
48. Any payment (other than a training allowance) made, whether by...
49. Any supplementary pension under article 23(2) of the Naval, Military...
50. Where the claimant is in receipt of any benefit under...
51. In the case of a pension awarded at the supplementary...
52. (1) Any payment which is— (a) made under any of...
53. Any payment made under the Community Care (Direct Payments) Act...
54. (1) Any payment specified in sub-paragraph (2) to a claimant...
55. (1) Subject to sub-paragraph (2), in the case of a...
56. Any payment made with respect to a person on account...
57. (1) Any payment of a sports award except to the...
58. Where the amount of a subsistence allowance paid to a...
59. In the case of a claimant participating in an employment...
60. (1) Subject to sub-paragraph (3), any payment of child maintenance...
61. In the case of a person to whom paragraph (5)...
62. Any discretionary housing payment paid pursuant to regulation 2(1) of...
63. (1) Any payment made by a local authority or by...
64. Any housing benefit to which the claimant is entitled.
65. Any council tax benefit to which the claimant is entitled...

#### SCHEDULE 9 — CAPITAL TO BE DISREGARDED

1. The dwelling occupied as the home but, notwithstanding regulation 83...
2. Any premises acquired for occupation by the claimant which that...
3. Any sum directly attributable to the proceeds of sale of...
4. Any premises occupied in whole or in part by—
5. Where a claimant has ceased to occupy what was formerly...
6. Any premises where the claimant is taking reasonable steps to...
7. Any premises which the claimant intends to occupy as the...
8. Any premises which the claimant intends to occupy as the...
9. Any future interest in property of any kind, other than...
10. (1) The assets of any business owned in whole or...
11. (1) Subject to sub-paragraph (2), any arrears of, or any...
12. Any sum— (a) paid to the claimant in consequence of...
13. Any sum— (a) deposited with a housing association as defined...

14. Any personal possessions except those which had or have been...
15. The value of the right to receive any income under...
16. Where the funds of a trust are derived from a...
17. (1) Any payment made to the claimant or the claimant's...
18. The value of the right to receive any income under...
19. The value of the right to receive any income which...
20. The surrender value of any policy of life insurance.
21. Where any payment of capital falls to be made by...
22. (1) Any payment made by a local authority in accordance...
23. Any social fund payment made pursuant to Part 8 of...
24. Any refund of tax which falls to be deducted under...
25. Any capital which under regulation 105 or 137 (capital treated...
26. Where a payment of capital is made in a currency...
27. (1) Any payment made under the Macfarlane Trust, the Macfarlane...
28. The value of the right to receive an occupational or...
29. The value of any funds held under a personal pension...
30. The value of the right to receive any rent except...
31. Any payment in kind made by a charity or under...
32. Any payment made pursuant to section 2 of the Employment...
33. Any payment made by the Secretary of State to compensate...
34. Any payment made to a juror or a witness in...
35. Any payment in consequence of reduction of council tax under...
36. Any grant made to the claimant in accordance with a...
37. (1) Any payment or repayment made— (a) as respects England,...
38. Any payment made to such persons entitled to receive benefits...
39. Any payment made either by the Secretary of State for...
40. Any arrears of supplementary pension which is disregarded under paragraph...
41. Any payment (other than a training allowance) made, whether by...
42. Any payment made by a local authority under section 3...
43. (1) Any sum to which sub-paragraph (2) applies and—
44. Any sum administered on behalf of a person in accordance...
45. Any payment to the claimant as holder of the Victoria...
46. In the case of a person who is receiving, or...
47. (1) Any payment for a sports award for a period...
48. In the case of a claimant participating in an employment...
49. Any arrears of subsistence allowance paid as a lump sum...
50. Where an ex-gratia payment of £10,000 has been made by...
51. In the case of a person to whom paragraph (5)...
52. (1) Any payment— (a) by way of an education maintenance...
53. (1) Subject to sub-paragraph (2), the amount of any trust...
54. The amount of a payment, other than a war pension...
55. (1) Any payment made by a local authority or by...
56. Any payment made under the Community Care (Direct Payments) Act...
57. Any payment made to the claimant pursuant to regulations under...
58. Any payment made to the claimant in accordance with regulations...

Explanatory Note