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
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
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
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.
9. The Royal Irish Regiment, to the extent that its members...
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...
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 2 — 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...
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