
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 12

DISQUALIFICATION

Exceptions from disqualification for imprisonment

160.—(1) Notwithstanding section 18(4)(b) of the Act, a claimant is not disqualified for receiving a contributory 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; or
- (c) pursuant to any order for detention,

made by a court in such 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 is not to be disqualified for receiving a contributory allowance, for any period during which the claimant is undergoing detention in legal custody after the conclusion of criminal proceedings if it is a period during which the claimant is liable to be detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless—

- (a) the claimant is detained or liable to be detained under section 45A of the Mental Health Act 1983⁽¹⁾ (hospital and limitation directions) or section 59A of the Criminal Procedure (Scotland) Act 1995⁽²⁾ (hospital direction); or
- (b) the claimant is detained or liable to be detained under section 47 of the Mental Health Act 1983⁽³⁾ (removal to hospital of persons serving sentences of imprisonment, etc.) or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment for mental disorder); or
- (c) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment for mental disorder).

(4) Where—

(1) 1983 c. 20. Section 45A was inserted by the Crime (Sentences) Act 1997 (c. 43), section 46 and amended by the Criminal Justice Act 2003 (c. 44), Schedule 32, paragraphs 37 and 39 and Schedule 37, Part 7.

(2) 1995 c. 46. Section 59A was inserted by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp. 13), Schedule 4, paragraph 8(6).

(3) Section 47 was amended by the Crime (Sentences) Act 1997, section 49(3).

- (a) paragraph (3)(a) or (b) applies, in relation to a claimant; and
- (b) a certificate given by or on behalf of the Secretary of State or Scottish Ministers shows the earliest date on which that claimant would have been expected to be discharged from detention under the sentence or order if the claimant had not been transferred to a hospital or similar institution,

those paragraphs are to be treated as not satisfied in relation to that claimant from the day following that date.

(5) 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⁽⁴⁾ applies or any naval court-martial, army court-martial or air force court-martial within the meaning of the Courts-Martial (Appeals) Act 1968⁽⁵⁾ 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 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⁽⁶⁾, a detention and training order under section 100 of that Act, a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003⁽⁷⁾ or an extended sentence under section 228 of that Act or, in Scotland, under section 205, 207 or 208 of the Criminal Procedure (Scotland) Act 1995;
- (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.

(6) 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 a contributory allowance, the claimant is not disqualified for receiving that allowance by reason only of the imprisonment or detention.

⁽⁴⁾ 1884 c. 31.

⁽⁵⁾ 1968 c. 20.

⁽⁶⁾ 2000 c. 6. Section 90 was amended by the Criminal Justice and Court Services Act 2000 (c. 43), section 60(2) and (3).

⁽⁷⁾ 2003 c. 44.