



2007 CHAPTER 2

PART 1

EMPLOYMENT AND SUPPORT ALLOWANCE

Entitlement

Employment and support allowance

1.—(1) An allowance, to be known as an employment and support allowance, shall be payable in accordance with the provisions of this Part.

(2) Subject to the provisions of this Part, a claimant is entitled to an employment and support allowance if he satisfies the basic conditions and either—

- (a) the first and the second conditions set out in Part 1 of Schedule 1 (conditions relating to national insurance) or the third condition set out in that Part of that Schedule (condition relating to youth), or
- (b) the conditions set out in Part 2 of that Schedule (conditions relating to financial position).

(3) The basic conditions are that the claimant—

- (a) has limited capability for work,
- (b) is at least 16 years old,
- (c) has not reached pensionable age,
- (d) is in Northern Ireland,
- (e) is not entitled to income support, and

- (f) is not entitled to a jobseeker's allowance (and is not a member of a couple who are entitled to a joint-claim jobseeker's allowance).
- (4) For the purposes of this Part, a person has limited capability for work if—
 - (a) his capability for work is limited by his physical or mental condition, and
 - (b) the limitation is such that it is not reasonable to require him to work.
- (5) An employment and support allowance is payable in respect of a week.
- (6) In subsection (3)—
 - “joint-claim jobseeker's allowance” means a jobseeker's allowance entitlement to which arises by virtue of Article 3(2B) of the Jobseekers Order;
 - “pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 2 to the [Pensions \(Northern Ireland\) Order 1995 \(NI 22\)](#).
- (7) In this Part—
 - “contributory allowance” means an employment and support allowance entitlement to which is based on subsection (2)(a);
 - “income-related allowance” means an employment and support allowance entitlement to which is based on subsection (2)(b).

Amount of contributory allowance

- 2.—(1) In the case of a contributory allowance, the amount payable in respect of a claimant shall be calculated by—
- (a) taking such amount as may be prescribed,
 - (b) if in his case the conditions of entitlement to the support component or the work-related activity component are satisfied, adding the amount of that component, and
 - (c) making prescribed deductions in respect of any payments to which section 3 applies.
- (2) The conditions of entitlement to the support component are—
- (a) that the assessment phase has ended,
 - (b) that the claimant has limited capability for work-related activity, and
 - (c) that such other conditions as may be prescribed are satisfied.
- (3) The conditions of entitlement to the work-related activity component are—
- (a) that the assessment phase has ended,
 - (b) that the claimant does not have limited capability for work-related activity, and
 - (c) that such other conditions as may be prescribed are satisfied.
- (4) Regulations may—

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- (a) prescribe circumstances in which paragraph (a) of subsection (2) or (3) is not to apply;
 - (b) prescribe circumstances in which entitlement under subsection (2) or (3) is to be backdated;
 - (c) make provision about the amount of the component under subsection (2) or (3).
- (5) For the purposes of this Part, a person has limited capability for work-related activity if—
- (a) his capability for work-related activity is limited by his physical or mental condition, and
 - (b) the limitation is such that it is not reasonable to require him to undertake such activity.

Deductions from contributory allowance: supplementary

3.—(1) This section applies to payments of the following kinds which are payable to the claimant—

- (a) pension payments,
 - (b) PPF periodic payments, and
 - (c) payments of a prescribed description made to a person who is a member of, or has been appointed to, a prescribed body carrying out public or local functions.
- (2) Regulations may—
- (a) disapply section 2(1)(c), so far as relating to pension payments or PPF periodic payments, in relation to persons of a prescribed description;
 - (b) provide for pension payments or PPF periodic payments of a prescribed description to be treated for the purposes of that provision as not being payments to which this section applies;
 - (c) provide for sums of a prescribed description to be treated for the purposes of this section as payable to persons as pension payments or PPF periodic payments (including, in particular, sums in relation to which there is a deferred right of receipt);
 - (d) make provision for the method of determining how payments to which this section applies are, for the purposes of section 2, to be related to periods for which a person is entitled to a contributory allowance.
- (3) In this section—
- “pension payment” means—
- (a) a periodical payment made in relation to a person under a personal pension scheme or, in connection with the coming to an end of an

employment of his, under an occupational pension scheme or a public service pension scheme,

- (b) a payment of a prescribed description made under an insurance policy providing benefits in connection with physical or mental illness or disability, and
- (c) such other payments as may be prescribed;

“PPF periodic payment” means—

- (a) any periodic compensation payment made in relation to a person, payable under the pension compensation provisions as specified in Article 146(2) of the [Pensions \(Northern Ireland\) Order 2005 \(NI 1\)](#) or section 162(2) of the [Pensions Act 2004 \(c. 35\)](#) (the pension compensation provisions), and
- (b) any periodic payment made in relation to a person, payable under Article 150 of the [Pensions \(Northern Ireland\) Order 2005](#) or section 166 of the [Pensions Act 2004](#) (duty to pay scheme benefits unpaid at assessment date etc.).

(4) For the purposes of subsection (3), “occupational pension scheme”, “personal pension scheme” and “public service pension scheme” each have the meaning given by section 1 of the [Pension Schemes \(Northern Ireland\) Act 1993 \(c. 49\)](#), except that “personal pension scheme” includes—

- (a) an annuity contract or trust scheme approved under section 620 or 621 of the [Income and Corporation Taxes Act 1988 \(c. 1\)](#), and
- (b) a substituted contract within the meaning of section 622(3) of that Act,

which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the [Finance Act 2004 \(c. 12\)](#).

Amount of income-related allowance

4.—(1) In the case of an income-related allowance, the amount payable in respect of a claimant shall be—

- (a) if he has no income, the applicable amount;
- (b) if he has an income, the amount by which the applicable amount exceeds his income.

(2) Subject to subsection (3), the applicable amount for the purposes of subsection (1) shall be calculated by—

- (a) taking such amount, or the aggregate of such amounts, as may be prescribed, and
- (b) if in the claimant’s case the conditions of entitlement to the support component or the work-related activity component are satisfied, adding the amount of that component.

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- (3) Regulations may provide that, in prescribed cases, the applicable amount for the purposes of subsection (1) shall be nil.
- (4) The conditions of entitlement to the support component are—
- (a) that the assessment phase has ended,
 - (b) that the claimant has limited capability for work-related activity, and
 - (c) that such other conditions as may be prescribed are satisfied.
- (5) The conditions of entitlement to the work-related activity component are—
- (a) that the assessment phase has ended,
 - (b) that the claimant does not have limited capability for work-related activity, and
 - (c) that such other conditions as may be prescribed are satisfied.
- (6) Regulations may—
- (a) prescribe circumstances in which paragraph (a) of subsection (4) or (5) is not to apply;
 - (b) prescribe circumstances in which entitlement under subsection (4) or (5) is to be backdated;
 - (c) make provision about the amount of the component under subsection (4) or (5).

Advance award of income-related allowance

- 5.—**(1) This section applies to claims for an employment and support allowance by a person who—
- (a) would be entitled to an income-related allowance, but for the fact that he does not satisfy the condition in paragraph 6(1)(a) of Schedule 1,
 - (b) would satisfy that condition if he were entitled to the component mentioned in section 4(4) or (5), and
 - (c) is not entitled to a contributory allowance.
- (2) In relation to claims to which this section applies, section 5(1) of the Administration Act (regulations about claims for benefit) shall have effect as if—
- (a) in paragraph (d) (power to permit an award on a claim for benefit for a future period to be made subject to the condition that the claimant satisfies the requirements for entitlement when the benefit becomes payable under the award), there were inserted at the end “and to such other conditions as may be prescribed”, and
 - (b) in paragraph (e) (power to provide for such an award to be revised or superseded under the 1998 Order if any of those requirements are found

not to have been satisfied), for “any of those requirements” there were substituted “any of the conditions to which the award is made subject”.

(3) Regulations may, in relation to claims to which this section applies, make provision enabling an award to be made on terms such that the time at which benefit becomes payable under the award is later than the start of the period for which the award is made.

Amount payable where claimant entitled to both forms of allowance

6.—(1) This section applies where a claimant is entitled to both a contributory allowance and an income-related allowance.

(2) If the claimant has no income, the amount payable by way of an employment and support allowance shall be the greater of—

- (a) his personal rate, and
- (b) the applicable amount.

(3) If the claimant has an income, the amount payable by way of an employment and support allowance shall be the greater of—

- (a) his personal rate, and
- (b) the amount by which the applicable amount exceeds his income.

(4) Where the amount payable to the claimant by way of an employment and support allowance does not exceed his personal rate, the allowance shall be treated as attributable to the claimant’s entitlement to a contributory allowance.

(5) Where the amount payable to the claimant by way of an employment and support allowance exceeds his personal rate, the allowance shall be taken to consist of two elements, namely—

- (a) an amount equal to his personal rate, and
- (b) an amount equal to the excess.

(6) The element mentioned in subsection (5)(a) shall be treated as attributable to the claimant’s entitlement to a contributory allowance.

(7) The element mentioned in subsection (5)(b) shall be treated as attributable to the claimant’s entitlement to an income-related allowance.

(8) In this section—

“applicable amount” means the amount which, in the claimant’s case, is the applicable amount for the purposes of section 4(1);

“personal rate” means the amount calculated in accordance with section 2(1).

Exclusion of payments below prescribed minimum

7. Except in such circumstances as regulations may provide, an employment and support allowance shall not be payable where the amount otherwise payable would be less than a prescribed minimum.