



## 2007 CHAPTER 2

### PART 1

#### EMPLOYMENT AND SUPPORT ALLOWANCE

##### *Miscellaneous*

##### **Income and capital: general**

**17.—**(1) In relation to a claim for an employment and support allowance, the income and capital of a person shall be calculated or estimated in such manner as may be prescribed.

(2) A person's income in respect of a week shall be calculated in accordance with prescribed rules, which may provide for the calculation to be made by reference to an average over a period (which need not include the week concerned).

(3) Circumstances may be prescribed in which—

- (a) a person is to be treated as possessing capital or income which he does not possess;
- (b) capital or income which a person does possess is to be disregarded;
- (c) income is to be treated as capital;
- (d) capital is to be treated as income.

(4) Regulations may provide that a person's capital shall be deemed for the purposes of this Part to yield him an income at a prescribed rate.

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### Commencement Information

- II** S. 17 wholly in operation at 27.10.2008; s. 17 not in operation at Royal Assent see s. 60(1); s. 17 in operation for certain purposes at 1.7.2008 and wholly in operation at 27.10.2008 by [S.R. 2008/276](#), [art. 2\(2\)\(c\)](#), [Sch. Pt. 1](#)

### Disqualification

**18.—**(1) Regulations may provide for a person to be disqualified for receiving an employment and support allowance, or treated for such purposes as the regulations may provide as not having limited capability for work, if—

- (a) he has become someone who has limited capability for work through his own misconduct,
- (b) he remains someone who has limited capability for work through his failure without good cause to follow medical advice, or
- (c) he fails without good cause to observe any prescribed rules of behaviour.

(2) Regulations under subsection (1) shall provide for any such disqualification, or treatment, to be for such period not exceeding six weeks as may be determined in accordance with Chapter 2 of Part 2 of the 1998 Order.

(3) Regulations may prescribe for the purposes of subsection (1)—

- (a) matters which are, or are not, to be taken into account in determining whether a person has good cause for any act or omission;
- (b) circumstances in which a person is, or is not, to be regarded as having good cause for any act or omission.

(4) Except where regulations otherwise provide, a person shall be disqualified for receiving [<sup>F1</sup>an employment and support allowance] for any period during which he is—

- (a) absent from Northern Ireland; or
- (b) undergoing imprisonment or detention in legal custody.

### Textual Amendments

- F1** Words in s. 18(4) substituted (2.5.2016 for specified purposes, 27.9.2017 for specified purposes, 15.11.2017 and 13.12.2017 for specified purposes, 17.1.2018 and further specified dates for specified purposes, 16.5.2018 and further specified dates for specified purposes, 5.9.2018 and further specified dates for specified purposes, 1.2.2019 for specified purposes) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), [art. 2\(2\)](#), [Sch. 3 para. 21\(d\)](#); [S.R. 2016/215](#), [art. 2\(2\)\(c\)\(vi\)](#); [S.R. 2017/190](#), [art. 6](#) (with [arts. 7, 8, 10-25](#), [Sch. 3](#)); [S.R. 2017/216](#), [art. 4](#) (with [art. 5](#)); [S.R. 2018/1](#), [art. 4](#) (with [art. 5](#)); [S.R. 2018/97](#), [art. 4](#) (with [art. 5](#)); [S.R. 2018/138](#), [art. 4](#) (with [art. 5](#)); [S.R. 2019/7](#), [art. 2\(5\)-\(7\)](#) (with [art. 2\(8\)-\(12\)](#))

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#### Modifications etc. (not altering text)

- C1** S. 18(4)(b) excluded (27.10.2008) by [Employment and Support Allowance Regulations \(Northern Ireland\) 2008 \(S.R. 2008/280\)](#), regs. 1(1), **160(1)(3)**
- C2** S. 18(4)(b) excluded by [Employment and Support Allowance Regulations \(Northern Ireland\) 2008 \(S.R. 2008/280\)](#), reg. 160(3) (as substituted (25.3.2010) by [Social Security \(Persons Serving a Sentence of Imprisonment Detained in Hospital\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/58\)](#), **reg. 5(3)(a)**)
- C3** S. 18(4)(b) excluded (27.9.2017 and further specified dates for specified purposes) by [The Employment and Support Allowance Regulations\(Northern Ireland\) 2016 \(S.R. 2016/219\)](#), regs. 1(2), **96(1)**
- C4** S. 18(4)(b) excluded (27.9.2017 and further specified dates for specified purposes) by [The Employment and Support Allowance Regulations\(Northern Ireland\) 2016 \(S.R. 2016/219\)](#), regs. 1(2), **96(3)**

#### Commencement Information

- I2** S. 18 wholly in operation at 27.10.2008; s. 18 not in operation at Royal Assent see s. 60(1); s. 18(1)(2)(4) in operation for certain purposes at 1.7.2008 and wholly in operation at 27.10.2008 by [S.R. 2008/276](#), **art. 2(2)(c)**, [Sch. Pt. 1](#); s. 18 in operation at 27.10.2008 in so far as not already in operation by [S.R. 2008/276](#), **art. 2(2)(d)**, [Sch. Pt. 2](#)

#### Pilot schemes

**19.—(1)** Any regulations to which this subsection applies may be made so as to have effect for a specified period not exceeding [<sup>F2</sup>36 months].

(2) Subject to subsection (3), subsection (1) applies to—

- (a) regulations which are made under any provision of this Part, other than sections 3, 8 and 9;
- (b) regulations which are made under the Administration Act, so far as they relate to an employment and support allowance.

(3) Subsection (1) only applies to regulations if they are made with a view to [<sup>F3</sup>testing the extent to which the provision made by the regulations is likely to promote—

- (a) people remaining in work, or
- (b) people obtaining or being able to obtain work (or more work or better-paid work).]

(4) Regulations which, by virtue of subsection (1), are to have effect for a limited period are referred to in this section as a “pilot scheme”.

(5) A pilot scheme may provide that its provisions are to apply only in relation to—

- (a) one or more specified areas;
- (b) one or more specified classes of person;

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- (c) persons selected—
  - (i) by reference to prescribed criteria, or
  - (ii) on a sampling basis.

(6) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period.

(7) A pilot scheme may be replaced by a further pilot scheme making the same or similar provision.

#### Textual Amendments

- F2** Words in s. 19(1) substituted (13.8.2010) by [Welfare Reform Act \(Northern Ireland\) 2010 \(c. 13\)](#), [ss. 22\(2\)](#), 36(1)(g)
- F3** Words in s. 19(3) substituted (2.5.2016 for specified purposes) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), arts. 2(2), [63\(3\)](#); [S.R. 2016/215](#), art. 2(3)(b)

#### Relationship with statutory payments

**20.—**(1) A person is not entitled to an employment and support allowance in respect of a day if, for the purposes of statutory sick pay, that day—

- (a) is a day of incapacity for work in relation to a contract of service, and
- (b) falls within a period of entitlement (whether or not it is a qualifying day).

(2) Except as regulations may provide, a woman who is entitled to statutory maternity pay is not entitled to [<sup>F4</sup>an employment and support allowance] in respect of a day that falls within the maternity pay period.

(3) Regulations may provide that—

- (a) an amount equal to a woman's statutory maternity pay for a period shall be deducted from [<sup>F5</sup>an employment and support allowance] in respect of the same period,
- (b) a woman shall only be entitled to [<sup>F5</sup>an employment and support allowance] if there is a balance after the deduction, and
- (c) if there is such a balance, a woman shall be entitled to [<sup>F5</sup>an employment and support allowance] at a weekly rate equal to it.

(4) Except as regulations may provide, a person who is entitled to statutory adoption pay is not entitled to [<sup>F6</sup>an employment and support allowance] in respect of a day that falls within the adoption pay period.

(5) Regulations may provide that—

- (a) an amount equal to a person's statutory adoption pay for a period shall be deducted from [<sup>F7</sup>an employment and support allowance] in respect of the same period,

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- (b) a person shall only be entitled to [<sup>F7</sup>an employment and support allowance] if there is a balance after the deduction, and
- (c) if there is such a balance, a person shall be entitled to [<sup>F7</sup>an employment and support allowance] at a weekly rate equal to it.
- (6) Except as regulations may provide, a person who is entitled to [<sup>F8</sup>statutory shared parental pay] is not entitled to [<sup>F9</sup>an employment and support allowance] in respect of [<sup>F10</sup>a day that falls within a period in respect of which statutory shared parental pay is payable].
- (7) Regulations may provide that—
  - (a) an amount equal to a person's [<sup>F11</sup>statutory shared parental pay for a period] shall be deducted from [<sup>F12</sup>an employment and support allowance] in respect of the same period,
  - (b) a person shall only be entitled to [<sup>F12</sup>an employment and support allowance] if there is a balance after the deduction, and
  - (c) if there is such a balance, a person shall be entitled to [<sup>F12</sup>an employment and support allowance] at a weekly rate equal to it.
- (8) In this section—
  - <sup>F13</sup> ...
  - “adoption pay period” has the meaning given in section 167ZN(2) of that Act;
  - “maternity pay period” has the meaning given in section 161(1) of that Act.

#### Textual Amendments

- F4** Words in s. 20(2) substituted (2.5.2016 for specified purposes, 27.9.2017 for specified purposes, 15.11.2017 and 13.12.2017 for specified purposes, 17.1.2018 and further specified dates for specified purposes, 16.5.2018 and further specified dates for specified purposes, 5.9.2018 and further specified dates for specified purposes, 1.2.2019 for specified purposes) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 3 para. 21\(e\)](#); S.R. 2016/215, art. 2(2)(c)(vi); S.R. 2017/190, art. 6 (with arts. 7, 8, 10-25, Sch. 3); S.R. 2017/216, art. 4 (with art. 5); S.R. 2018/1, art. 4 (with art. 5); S.R. 2018/97, art. 4 (with art. 5); S.R. 2018/138, art. 4 (with art. 5); S.R. 2019/7, art. 2(5)-(7) (with art. 2(8)-(12))
- F5** Words in s. 20(3)(a)-(c) substituted (2.5.2016 for specified purposes, 27.9.2017 for specified purposes, 15.11.2017 and 13.12.2017 for specified purposes, 17.1.2018 and further specified dates for specified purposes, 16.5.2018 and further specified dates for specified purposes, 5.9.2018 and further specified dates for specified purposes, 1.2.2019 for specified purposes) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 3 para. 21\(e\)](#); S.R. 2016/215, art. 2(2)(c)(vi); S.R. 2017/190, art. 6 (with arts. 7, 8, 10-25, Sch. 3); S.R. 2017/216, art. 4 (with art. 5); S.R. 2018/1, art. 4 (with art. 5); S.R. 2018/97, art. 4 (with art. 5); S.R. 2018/138, art. 4 (with art. 5); S.R. 2019/7, art. 2(5)-(7) (with art. 2(8)-(12))
- F6** Words in s. 20(4) substituted (2.5.2016 for specified purposes, 27.9.2017 for specified purposes, 15.11.2017 and 13.12.2017 for specified purposes, 17.1.2018 and further specified

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- dates for specified purposes, 16.5.2018 and further specified dates for specified purposes, 5.9.2018 and further specified dates for specified purposes, 1.2.2019 for specified purposes) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 3 para. 21\(e\)](#); S.R. 2016/215, art. 2(2)(c)(vi); S.R. 2017/190, art. 6 (with arts. 7, 8, 10-25, Sch. 3); S.R. 2017/216, art. 4 (with art. 5); S.R. 2018/1, art. 4 (with art. 5); S.R. 2018/97, art. 4 (with art. 5); S.R. 2018/138, art. 4 (with art. 5); S.R. 2019/7, art. 2(5)-(7) (with art. 2(8)-(12))
- F7** Words in s. 20(5)(a)-(c) substituted (2.5.2016 for specified purposes, 27.9.2017 for specified purposes, 15.11.2017 and 13.12.2017 for specified purposes, 17.1.2018 and further specified dates for specified purposes, 16.5.2018 and further specified dates for specified purposes, 5.9.2018 and further specified dates for specified purposes, 1.2.2019 for specified purposes) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 3 para. 21\(e\)](#); S.R. 2016/215, art. 2(2)(c)(vi); S.R. 2017/190, art. 6 (with arts. 7, 8, 10-25, Sch. 3); S.R. 2017/216, art. 4 (with art. 5); S.R. 2018/1, art. 4 (with art. 5); S.R. 2018/97, art. 4 (with art. 5); S.R. 2018/138, art. 4 (with art. 5); S.R. 2019/7, art. 2(5)-(7) (with art. 2(8)-(12))
- F8** Words in s. 20(6) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 7\(a\)\(i\)](#); S.R. 2015/86, art. 3(2)(g) (with art. 6(1))
- F9** Words in s. 20(6) substituted (2.5.2016 for specified purposes, 27.9.2017 for specified purposes, 15.11.2017 and 13.12.2017 for specified purposes, 17.1.2018 and further specified dates for specified purposes, 16.5.2018 and further specified dates for specified purposes, 5.9.2018 and further specified dates for specified purposes, 1.2.2019 for specified purposes) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 3 para. 21\(e\)](#); S.R. 2016/215, art. 2(2)(c)(vi); S.R. 2017/190, art. 6 (with arts. 7, 8, 10-25, Sch. 3); S.R. 2017/216, art. 4 (with art. 5); S.R. 2018/1, art. 4 (with art. 5); S.R. 2018/97, art. 4 (with art. 5); S.R. 2018/138, art. 4 (with art. 5); S.R. 2019/7, art. 2(5)-(7) (with art. 2(8)-(12))
- F10** Words in s. 20(6) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 7\(a\)\(ii\)](#); S.R. 2015/86, art. 3(2)(g) (with art. 6(1))
- F11** Words in s. 20(7)(a) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 7\(b\)](#); S.R. 2015/86, art. 3(2)(g) (with art. 6(1))
- F12** Words in s. 20(7)(a)-(c) substituted (2.5.2016 for specified purposes, 27.9.2017 for specified purposes, 15.11.2017 and 13.12.2017 for specified purposes, 17.1.2018 and further specified dates for specified purposes, 16.5.2018 and further specified dates for specified purposes, 5.9.2018 and further specified dates for specified purposes, 1.2.2019 for specified purposes) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 3 para. 21\(e\)](#); S.R. 2016/215, art. 2(2)(c)(vi); S.R. 2017/190, art. 6 (with arts. 7, 8, 10-25, Sch. 3); S.R. 2017/216, art. 4 (with art. 5); S.R. 2018/1, art. 4 (with art. 5); S.R. 2018/97, art. 4 (with art. 5); S.R. 2018/138, art. 4 (with art. 5); S.R. 2019/7, art. 2(5)-(7) (with art. 2(8)-(12))
- F13** Words in s. 20(8) repealed (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 7\(c\)](#), [Sch. 2](#); S.R. 2015/86, art. 4(2)(f)(3) (with art. 7(2))

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**Modifications etc. (not altering text)**

- C5** S. 20(2) excluded (27.10.2008) by [Employment and Support Allowance Regulations \(Northern Ireland\) 2008 \(S.R. 2008/280\)](#), regs. 1(1), [80\(2\)](#)
- C6** S. 20(4) excluded (27.10.2008) by [Employment and Support Allowance Regulations \(Northern Ireland\) 2008 \(S.R. 2008/280\)](#), regs. 1(1), [81\(2\)](#)

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- C7** S. 20(6) excluded (day on which regulations made under or by virtue of ss. 167ZEA to 167ZEE of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 come into operation for certain purposes, otherwise 27.10.2008) by [Employment and Support Allowance Regulations \(Northern Ireland\) 2008 \(S.R. 2008/280\)](#), regs. 1(1)(3), **82(2)**

#### Commencement Information

- I3** S. 20 wholly in operation at 27.10.2008; s. 20 not in operation at Royal Assent see s. 60(1); s. 20(2)-(7) in operation for certain purposes at 1.7.2008 and wholly in operation at 27.10.2008 by [S.R. 2008/276](#), **art. 2(2)(c)**, [Sch. Pt. 1](#); s. 20 in operation at 27.10.2008 in so far as not already in operation by [S.R. 2008/276](#), **art. 2(2)(d)**, [Sch. Pt. 2](#)

### Deemed entitlement for other purposes

**21** Regulations may provide for a person who would be entitled to an employment and support allowance but for the operation of any provision of, or made under, this Part, the Administration Act or Chapter 2 of Part 2 of the 1998 Order (social security decisions and appeals) to be treated as if entitled to the allowance for the purposes of any rights or obligations (whether his own or another's) which depend on his entitlement, other than the right to payment of it.

### Supplementary provisions

**22** Schedule 2 (which contains further provisions in relation to an employment and support allowance) has effect.

#### Commencement Information

- I4** S. 22 wholly in operation at 27.10.2008; s. 22 not in operation at Royal Assent see s. 60(1); s. 22 in operation for certain purposes at 1.7.2008 and 27.10.2008 by [S.R. 2008/276](#), **art. 2(2)(c)**, [Sch. Pt. 1](#); s. 22 in operation at 27.10.2008 in so far as not already in operation by [S.R. 2008/276](#), **art. 2(2)(d)**, [Sch. Pt. 2](#)

### Recovery of sums in respect of maintenance

**23.—**<sup>F14</sup>(1) Regulations may make provision for the court to have power to make a recovery order against any person where an award of income-related allowance has been made to that person's spouse or civil partner.

(2) The reference in subsection (1) to a recovery order is to an order requiring the person against whom it is made to make payments to the Department or to such other person or persons as the court may determine.

(3) Regulations under subsection (1) may include—

- (a) provision as to the matters to which the court is, or is not, to have regard in determining any application under the regulations;

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- (b) provision as to the enforcement of orders under the regulations;
- (c) provision for the transfer by the Department of the right to receive payments under, and to exercise rights in relation to, orders under the regulations.
- (4) In this section, “the court” means a court of summary jurisdiction.]

#### Textual Amendments

**F14** S. 23 repealed (27.9.2017 for specified purposes, 15.11.2017 and 13.12.2017 for specified purposes, 17.1.2018 and further specified dates for specified purposes, 16.5.2018 and further specified dates for specified purposes, 5.9.2018 and further specified dates for specified purposes, 1.2.2019 for specified purposes) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 12 Pt. 1](#); [S.R. 2017/190](#), art. 6, [Sch. 2](#) (with arts. 7, 8, 10-25, [Sch. 3](#)); [S.R. 2017/216](#), art. 4 (with art. 5); [S.R. 2018/1](#), art. 4 (with art. 5); [S.R. 2018/97](#), art. 4 (with art. 5); [S.R. 2018/138](#), art. 4 (with art. 5); [S.R. 2019/7](#), art. 2(5)-(7) (with art. 2(8)-(12))

#### Commencement Information

**I5** S. 23 wholly in operation at 27.10.2008; s. 23 not in operation at Royal Assent see s. 60(1); s. 23(1)(3) in operation for certain purposes at 1.7.2008 and wholly in operation at 27.10.2008 by [S.R. 2008/276](#), [art. 2\(2\)\(c\)](#), [Sch. Pt. 1](#); s. 23 in operation at 27.10.2008 in so far as not already in operation by [S.R. 2008/276](#), [art. 2\(2\)\(d\)](#), [Sch. Pt. 2](#)



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(3)(za) inserted by [S.I. 2015/2006 \(N.I.\) art. 67\(2\)](#)
- s. 1(3B) inserted by [S.I. 2015/2006 \(N.I.\) art. 67\(3\)](#)
- s. 14(5) added by [2010 c. 13 \(N.I.\) s. 25\(2\)](#)
- s. 14(5) amendment to earlier affecting provision 2010 c. 13 (N.I.), s. 25(2) by [S.I. 2015/2006 \(N.I.\) art. 60\(7\)](#)
- s. 14(5) words substituted by [S.R. 2016/76 Sch. 6 para. 56\(b\)](#)
- Sch. 1 para. 6(1)(da) inserted by [2010 c. 13 \(N.I.\) s. 5\(2\)\(a\)](#)
- Sch. 1 para. 6(2A) inserted by [2010 c. 13 \(N.I.\) s. 5\(2\)\(b\)](#)
- Sch. 2 para. 4B inserted by [S.I. 2015/2006 \(N.I.\) art. 67\(4\)](#)
- Sch. 3 para. 12(4)(5) repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 1](#)