
DRAFT STATUTORY INSTRUMENTS

2013 No.

The Employment and Support Allowance Regulations 2013

PART 12

Disqualification

Disqualification for misconduct etc

93.—(1) Subject to paragraph (3), paragraph (2) applies where a claimant—

- (a) has limited capability for work by reason of the claimant’s own misconduct, except in a case where the limited capability is due to a sexually transmitted disease;
- (b) fails without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or surgery which the Secretary of State considers is major) recommended by a doctor with whom, or a hospital or similar institution with which, the claimant is undergoing medical treatment, which would be likely to remove the limitation on the claimant’s capability for work;
- (c) fails without good cause to refrain from behaviour calculated to retard the claimant’s recovery to health; or
- (d) is, without good cause, absent from the claimant’s place of residence without informing the Secretary of State where the claimant may be found.

(2) A claimant referred to in paragraph (1) is to be disqualified for receiving an employment and support allowance for such period not exceeding six weeks as the Secretary of State may determine in accordance with Chapter 2 of Part 1 of the Social Security Act 1998⁽¹⁾.

(3) Paragraph (2) does not apply where the claimant—

- (a) is disqualified for receiving an employment and support allowance by virtue of regulations made under section 6B or 7 of the Social Security Fraud Act 2001; or
- (b) is a person in hardship.

(4) In this regulation, “doctor” means a registered medical practitioner, or in the case of a medical practitioner practising outside the United Kingdom, a person registered or recognised as such in the country in which the person undertakes medical practice.

Meaning of “person in hardship”

94.—(1) A claimant is a “person in hardship” if the claimant—

- (a) has informed the Secretary of State of the circumstances on which the claimant relies to establish that fact; and
 - (b) falls within paragraph (2), (3) or (5).
- (2) A claimant falls within this paragraph if—
- (a) she is pregnant;

(1) 1998 c.14.

- (b) a member of the claimant's family is pregnant;
 - (c) the claimant is single and aged less than 18; or
 - (d) the claimant is a member of a couple and both members are aged less than 18.
- (3) Subject to paragraph (4), the claimant falls within this paragraph if the claimant or the claimant's partner—
- (a) has been awarded an attendance allowance, the care component or the daily living component;
 - (b) has claimed attendance allowance, disability living allowance or personal independence payment and the claim has not been determined;
 - (c) devotes what the Secretary of State considers is a considerable portion of each week to caring for another person who—
 - (i) has been awarded an attendance allowance, the care component or the daily living component; or
 - (ii) has claimed attendance allowance, disability living allowance or personal independence payment and the claim has not been determined; or
 - (d) has attained the qualifying age for state pension credit, which has the meaning given in section 1(6) of the State Pension Credit Act 2002(2).
- (4) A claimant to whom paragraph (3)(b) or (3)(c)(ii) applies is a person in hardship only for 26 weeks from the date of the claim unless the claimant is a person in hardship under another provision of this regulation.
- (5) The claimant falls within this paragraph where the Secretary of State is satisfied, having regard to all the circumstances and, in particular, the matters set out in paragraph (6), that unless an employment and support allowance is paid, the claimant, or a member of the claimant's family, will suffer hardship.
- (6) The matters referred to in paragraph (5) are—
- (a) the resources which are likely to be available to the claimant and the claimant's family and the length of time for which they might be available; and
 - (b) whether there is a substantial risk that essential items, including food, clothing and heating, will cease to be available to the claimant or a member of the claimant's family, or will be available at considerably reduced levels and the length of time for which this might be so.
- (7) In this regulation—
- “attendance allowance” means—
- (a) an attendance allowance under section 64 of the Contributions and Benefits Act(3);
 - (b) an increase of disablement pension under section 104 or 105 of that Act;
 - (c) a payment under regulations made under section 111 of, and paragraph 7(2)(b) of Schedule 8 to, that Act;
 - (d) an increase in allowance which is payable in respect of constant attendance under section 111 of, and paragraph 4 of Schedule 8 to, that Act;
 - (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(4) or any analogous payment;

(2) 2002 c.16.

(3) 1992 c.4. Section 64 was amended by section 66(1) of the Welfare Reform and Pensions Act 1999 (c.30) and paragraph 5 of Schedule 9 to the Welfare Reform Act 2012.

(4) S.I. 1983/686. Article 14 was substituted by S.I. 2001/420. Article 15 was amended by S.I. 2001/420. Article 16 was amended by S.I.s 1984/1675 and 2001/420.

- (f) any payment based on the need for attendance which is paid as an addition to a war disablement pension (which means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003⁽⁵⁾);

“care component” means the care component of disability living allowance at the highest or middle rate prescribed under section 72(3) of the Contributions and Benefits Act;

“daily living component” means the daily living component of personal independence payment at the standard or enhanced rate referred to in section 78 of the Welfare Reform Act 2012;

“disability living allowance” means a disability living allowance under section 71 of the Contributions and Benefits Act⁽⁶⁾;

“personal independence payment” means an allowance under Part 4 of the Welfare Reform Act 2012.

Treating a claimant as not having limited capability for work

95. The claimant is to be treated as not having limited capability for work if the claimant is disqualified for receiving an employment and support allowance during a period of imprisonment or detention in legal custody if that disqualification is for more than six weeks.

Exceptions from disqualification for imprisonment

96.—(1) Notwithstanding section 18(4)(b) of the Act⁽⁷⁾, a claimant is not disqualified for receiving an employment and support 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 of a court in criminal proceedings; or
- (c) pursuant to any order for detention made by a court in criminal 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 (“C”) is not to be disqualified for receiving an employment and support allowance, for any period during which C is undergoing detention in legal custody after the conclusion of criminal proceedings if it is a period during which C is detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless C satisfies either of the following conditions.

(4) The first condition is that—

- (a) C is being detained under section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentences of imprisonment etc); and

⁽⁵⁾ 2003 c.1. Section 639(2) was inserted by the Finance Act 2005 (c.7).

⁽⁶⁾ Section 71 was amended by section 67 of the Welfare Reform and Pensions Act 1999.

⁽⁷⁾ Section 18(4) was amended by paragraph 26 of Schedule 3 to the Welfare Reform Act 2012.

- (b) in any case where there is in relation to C a release date within the meaning of section 50(3) of that Act, C is being detained on or before the day which the Secretary of State certifies to be that release date.
- (5) The second condition is that C is being detained under—
- (a) section 59A of the Criminal Procedure (Scotland) Act 1995 (hospital direction); or
 - (b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment of mental disorder).
- (6) 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⁽⁸⁾ applies or any naval court-martial, army court-martial or air force court-martial within the meaning of the Courts-Martial (Appeals) Act 1968⁽⁹⁾ 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⁽¹⁰⁾, a detention and training order under section 100 of that Act⁽¹¹⁾, a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003⁽¹²⁾ or an extended sentence under section 228 of that Act⁽¹³⁾ or, in Scotland, under section 205, 207 or 208 of the Criminal Procedure (Scotland) Act 1995⁽¹⁴⁾;
 - (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.
- (7) 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 an employment and support allowance, the claimant is not disqualified for receiving that allowance by reason only of the imprisonment or detention.

(8) 1884 c.31.

(9) 1968 c.20.

(10) 2000 c.6. Section 90 was amended by section 60 of the Criminal Justice and Court Services Act 2000 (c.43). Section 91 was amended by paragraph 181 of Schedule 7 to the Criminal Justice and Court Services Act 2000, paragraph 43 of Schedule 6 to the Sexual Offences Act 2003 (c.42), section 289 of, and Schedule 7 and paragraph 110 of Schedule 32 to, the Criminal Justice Act 2003 (c.44), paragraph 7 of Schedule 1 to the Violent Crime Reduction Act 2006 (c.38) and paragraph 56 of Schedule 4 to the Criminal Justice and Immigration Act 2008 (c.4).

(11) Section 100 was amended by paragraph 111 of Schedule 32 to the Criminal Justice Act 2003 and paragraph 184 of Schedule 7 to the Criminal Justice and Court Services Act 2000.

(12) Section 226 was amended by section 14 of the Criminal Justice and Immigration Act 2008.

(13) Section 228 was amended by section 16 of, and Schedule 28 to, the Criminal Justice and Immigration Act 2008.

(14) 1995 c. 46. Section 205 was amended by section 2(1) of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7). Section 207 was amended by paragraph 4(3) of the Violent Crime Reduction Act 2006 (c.38) and section 6(4) of, and paragraph 21(25) of Schedule 1 to, the Crime and Punishment (Scotland) Act 1997 (c.48). Section 208 was amended by section 290(3) of the Criminal Justice Act 2003 (c.44), section 10(3) and (4) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), section 49 of the Violent Crime Reduction Act 2006 and section 21(2) and (3) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

Suspension of payment of an employment and support allowance during imprisonment

97.—(1) Subject to the following provisions of this regulation, the payment of an employment and support allowance to any claimant—

- (a) which is excepted from the operation of section 18(4)(b) of the Act by virtue of the provisions of regulation 96(1), (3) or (7); or
- (b) which is payable otherwise than in respect of a period during which the claimant is undergoing imprisonment or detention in legal custody,

is suspended while that claimant is undergoing imprisonment or detention in legal custody.

(2) An employment and support allowance is not to be suspended while the claimant is liable to be detained in a hospital or similar institution, as defined in regulation 96(6), during a period for which in the claimant's case, the allowance is or would be excepted from the operation of section 18(4)(b) by virtue of the provisions of regulation 96(3).

(3) Where, by virtue of this regulation, payment of an employment and support allowance is suspended for any period, the period of suspension is not to be taken into account in calculating any period under the provisions of regulation 55 of the Claims and Payments Regulations 2013 (extinguishment of right to payment if payment is not obtained within the prescribed time).