

*Status: Point in time view as at 11/12/2008.*

*Changes to legislation: Welfare Reform Act 2007, SCHEDULE 1 is up to date with all changes known to be in force on or before 29 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 1

#### EMPLOYMENT AND SUPPORT ALLOWANCE: ADDITIONAL CONDITIONS

#### PART 1

#### CONTRIBUTORY ALLOWANCE

##### *Conditions relating to national insurance*

- 1 (1) The first condition is that—
  - (a) the claimant has actually paid Class 1 or Class 2 contributions in respect of one of the last three complete tax years (“the base tax year”) before the beginning of the relevant benefit year,
  - (b) those contributions must have been paid before the relevant benefit week, and
  - (c) the earnings factor derived as mentioned in sub-paragraph (2) must be not less than the base tax year's lower earnings limit multiplied by 25.
- (2) The earnings factor referred to in sub-paragraph (1)(c) is the aggregate of the claimant's earnings factors derived—
  - (a) from so much of his earnings as did not exceed the base tax year's upper earnings limit and upon which primary Class 1 contributions have been paid or treated as paid, and
  - (b) from Class 2 contributions.
- (3) Where primary Class 1 contributions have been paid or treated as paid on any part of a person's earnings, sub-paragraph (2)(a) shall have effect as if such contributions had been paid or treated as paid on so much of the earnings as did not exceed the base tax year's upper earnings limit.
- (4) Regulations may—
  - (a) provide for the condition set out in sub-paragraph (1) to be taken to be satisfied in the case of persons who have been entitled to any prescribed description of benefit during any prescribed period or at any prescribed time;
  - (b) with a view to securing any relaxation of the requirements of that condition in relation to persons who have been so entitled, provide for that condition to apply in relation to them subject to prescribed modifications.
- (5) In sub-paragraph (4), “benefit” means—
  - (a) any benefit within the meaning of section 122(1) of the Contributions and Benefits Act,
  - (b) any benefit under Parts 7 to 12 of that Act,
  - (c) credits under regulations under section 22(5) of that Act,

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- [<sup>F1</sup>(ca) credits under section 23A of that Act,]
- (d) a contributory allowance, and
- (e) working tax credit.

#### Textual Amendments

**F1** Sch. 1 para. 1(5)(ca) inserted (26.9.2007) by Pensions Act 2007 (c. 22), s. 30(3), Sch. 1 para. 11

#### Commencement Information

**I1** Sch. 1 para. 1(1)-(3)(5) in force at 27.10.2008 by S.I. 2008/787, art. 2(4)(d)

**I2** Sch. 1 para. 1(4) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

**I3** Sch. 1 para. 1(4) in force at 27.10.2008 in so far as not already in force by S.I. 2008/787, art. 2(4)(d)

- 2 (1) The second condition is that—
- (a) the claimant has in respect of the last two complete tax years before the beginning of the relevant benefit year either paid or been credited with Class 1 or Class 2 contributions or been credited with earnings, and
  - (b) the earnings factor derived as mentioned in sub-paragraph (2) must be not less in each of those years than the year's lower earnings limit multiplied by 50.
- (2) The earnings factor referred to in sub-paragraph (1)(b) is the aggregate of the claimant's earnings factors derived—
- (a) from so much of his earnings as did not exceed the upper earnings limit for the year and upon which primary Class 1 contributions have been paid or treated as paid or from earnings credited, and
  - (b) from Class 2 contributions.
- (3) Where primary Class 1 contributions have been paid or treated as paid on any part of a person's earnings, sub-paragraph (2)(a) shall have effect as if such contributions had been paid or treated as paid on so much of the earnings as did not exceed the upper earnings limit for the year.

#### Commencement Information

**I4** Sch. 1 para. 2 in force at 27.10.2008 by S.I. 2008/787, art. 2(4)(d)

- 3 (1) For the purposes of paragraphs 1 and 2—
- (a) “benefit year” means a period which is a benefit year for the purposes of Part 2 of the Contributions and Benefits Act or such other period as may be prescribed for the purposes of this Part of this Schedule;
  - (b) “Class 1 contributions”, “Class 2 contributions” and “primary Class 1 contributions” have the same meaning as in the Contributions and Benefits Act (see section 1 of that Act);
  - (c) “earnings” shall be construed in accordance with sections 3, 4 and 112 of that Act;
  - (d) “earnings factor” shall be construed in accordance with sections 22 and 23 of that Act;
  - (e) “lower earnings limit” and “upper earnings limit” shall be construed in accordance with section 5 of that Act and references to the lower or upper

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- earnings limit of a tax year are to whatever is (or was) the limit in force for that year under that section;
- (f) “relevant benefit year” is the benefit year which includes the beginning of the period of limited capability for work which includes the relevant benefit week;
- (g) “tax year” means the 12 months beginning with 6th April in any year.
- (2) Regulations may provide for sub-paragraph (1)(f) to have effect in prescribed circumstances with prescribed modifications in the case of—
- (a) a person who has previously ceased to be entitled to a contributory allowance;
- (b) a person who has made a claim for an employment and support allowance in connection with which he failed to satisfy one or both of the conditions in paragraphs 1 and 2.

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

- C1** Sch. 1 para. 3(1)(f) modified (27.10.2008) by [Employment and Support Allowance Regulations 2008](#) (S.I. 2008/794), regs. 1(a), **13**

**Commencement Information**

- I5** Sch. 1 para. 3(1) in force at 27.10.2008 by [S.I. 2008/787](#), **art. 2(4)(d)**
- I6** Sch. 1 para. 3(2) in force at 18.3.2008 for specified purposes by [S.I. 2008/787](#), **art. 2(1)**
- I7** Sch. 1 para. 3(2) in force at 27.10.2008 in so far as not already in force by [S.I. 2008/787](#), **art. 2(4)(d)**

*Condition relating to youth*

- 4 (1) The third condition is that —
- (a) the claimant was under 20 or, in prescribed cases, 25 when the relevant period of limited capability for work began,
- (b) he is not receiving full-time education,
- (c) he satisfies such conditions as may be prescribed with respect to residence or presence in Great Britain (or both), and
- (d) there has been a day in the relevant period of limited capability for work—
- (i) which was a day on which he was aged at least 16, and
- (ii) which was preceded by a period of 196 consecutive days throughout which he had limited capability for work.
- (2) In sub-paragraph (1), “relevant period of limited capability for work” means the period of limited capability for work which includes the relevant benefit week.
- (3) Regulations may prescribe circumstances in which sub-paragraph (1)(a) does not apply in the case of a person who has previously ceased to be entitled to an employment and support allowance to which he was entitled by virtue of satisfying the condition set out in sub-paragraph (1).
- (4) Regulations may make provision about when, for the purposes of sub-paragraph (1) (b), a person is, or is not, to be treated as receiving full-time education.

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

- C2** Sch. 1 para. 4(1)(a) excluded (27.10.2008) by [Employment and Support Allowance Regulations 2008](#) (S.I. 2008/794), regs. 1(a), **10**

**Commencement Information**

- I8** Sch. 1 para. 4(1)(a)(c)(3)(4) in force at 18.3.2008 for specified purposes by S.I. 2008/787, **art. 2(1)**  
**I9** Sch. 1 para. 4(1)(a)(c)(3)(4) in force at 27.10.2008 in so far as not already in force by S.I. 2008/787, **art. 2(4)(d)**  
**I10** Sch. 1 para. 4(1)(b)(d)(2) in force at 27.10.2008 by S.I. 2008/787, **art. 2(4)(d)**

*“Relevant benefit week”*

- 5 In this Part of this Schedule, “relevant benefit week” means the week in relation to which the question of entitlement to an employment and support allowance is being considered.

**Commencement Information**

- I11** Sch. 1 para. 5 in force at 27.10.2008 by S.I. 2008/787, **art. 2(4)(d)**

**PART 2**

INCOME-RELATED ALLOWANCE

- 6 (1) The conditions are that the claimant—
- (a) has an income which does not exceed the applicable amount or has no income;
  - (b) does not have capital which, or a prescribed part of which, exceeds the prescribed amount;
  - (c) is not entitled to state pension credit;
  - (d) is not a member of a couple the other member of which is entitled to an income-related allowance, state pension credit, income support or an income-based jobseeker's allowance;
  - (e) is not engaged in remunerative work;
  - (f) is not a member of a couple the other member of which is engaged in remunerative work;
  - (g) is not receiving education.
- (2) Where the claimant is a member of a couple, the income and capital of the other member of the couple shall, except in prescribed circumstances, be treated for the purpose of this paragraph as income and capital of the claimant.
- (3) Regulations may prescribe circumstances in which, for the purposes of subparagraph (1)(e) and (f)—
- (a) a person who is not engaged in remunerative work is to be treated as engaged in remunerative work, or
  - (b) a person who is engaged in remunerative work is to be treated as not engaged in remunerative work.

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- (4) Regulations may—
- (a) make provision about when, for the purposes of sub-paragraph (1)(g), a person is, or is not, to be treated as receiving education;
  - (b) prescribe circumstances in which sub-paragraph (1)(g) does not apply.
- (5) In this paragraph—
- “applicable amount” means the amount which, in the claimant's case, is the applicable amount for the purposes of section 4(1);
  - “couple” means—
    - (a) a man and woman who are married to each other and are members of the same household;
    - (b) a man and woman who are not married to each other, but are living together as husband and wife otherwise than in prescribed circumstances;
    - (c) two people of the same sex who are civil partners of each other and are members of the same household; or
    - (d) two people of the same sex who are not civil partners of each other, but are living together as if they were civil partners otherwise than in prescribed circumstances;
  - “education” has such meaning as may be prescribed;
  - “income-based jobseeker's allowance” has the same meaning as in the Jobseekers Act 1995 (c. 18);
  - “remunerative work” has such meaning as may be prescribed.
- (6) For the purposes of this paragraph, two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex.
- (7) Regulations may make provision for the preceding provisions of this paragraph to have effect with prescribed modifications in a case where—
- (a) the claimant is a husband or wife by virtue of a marriage entered into under a law which permits polygamy,
  - (b) either party to the marriage has for the time being any spouse additional to the other party, and
  - (c) the claimant, the other party to the marriage and the additional spouse are members of the same household.
- (8) Regulations may make provision for the purposes of this paragraph as to circumstances in which people are to be treated as being or not being members of the same household.

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

- C3** Sch. 1 para. 6(1)(g) excluded (27.10.2008) by [Employment and Support Allowance Regulations 2008 \(S.I. 2008/794\)](#), regs. 1(a), **33(2)(c)**
- C4** Sch. 1 para. 6(1)(g) excluded (27.10.2008) by [Employment and Support Allowance Regulations 2008 \(S.I. 2008/794\)](#), regs. 1(a), **18**

**Commencement Information**

- I12** Sch. 1 para. 6(1)(a)(c)-(g)(5)(6) in force at 27.10.2008 by [S.I. 2008/787](#), **art. 2(4)(d)**
- I13** Sch. 1 para. 6(1)(b)(2)-(4)(7)(8) in force at 18.3.2008 for specified purposes by [S.I. 2008/787](#), **art. 2(1)**

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| <p><b>I14</b> Sch. 1 para. 6(1)(b)(2)-(4)(7)(8) in force at 27.10.2008 in so far as not already in force by S.I. 2008/787, <b>art. 2(4)(d)</b></p> <p><b>I15</b> Sch. 1 para. 6(5) in force at 18.3.2008 for specified purposes by S.I. 2008/787, <b>art. 2(1)</b></p> |
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