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STATUTORY INSTRUMENTS

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**2008 No. 2428**

**The Employment and Support Allowance  
(Miscellaneous Amendments) Regulations 2008**

**PART 2**

**Child Maintenance Amendments of the principal Regulations**

**20.**—(1) In regulation 2(2) (interpretation) omit “Chapter 9 of Part 10 (income and capital – child support) and”.

(2) In the heading to each of the following regulations, before “liable relative” insert “child maintenance or”—

- (a) 85 (liable relative payments);
- (b) 120 (treatment of liable relative payments);
- (c) 124 (calculation of the weekly amount of a liable relative payment); and
- (d) 125 (date on which a liable relative payment is to be treated as paid).

(3) In regulation 85 for “liable relatives” substitute “child maintenance and liable relative payments”.

(4) Omit—

- (a) regulation 86 (child support);
- (b) regulation 126 (liable relative payments to be treated as capital);
- (c) in Part 10, the whole of Chapter 9.

(5) In Part 10 for the heading to Chapter 8 (liable relative) substitute “child maintenance and liable relative payments”.

(6) In regulation 118(6) (calculation of tariff income from capital) for “regulations 112 and 126 (income treated as capital and liable relative payments treated as capital)” substitute “regulation 112 (income treated as capital)”.

(7) In regulation 119 (interpretation)—

(a) before the definition of “claimant” insert—

““child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

- (a) the Child Support Act 1991(1);
- (b) the Child Support (Northern Ireland) Order 1991(2);
- (c) a court order;
- (d) a consent order;

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(1) 1991 c. 48.

(2) S.I. 1991/2628 (N.I. 23).

- (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;”;
- (b) at the appropriate place insert—
  - ““claimant’s family” shall be construed in accordance with section 137 of the Contributions and Benefits Act (interpretation of part 7 and supplementary provisions);
  - “housing costs” means those costs which may be met under paragraph 1(2) of Schedule 6;”;
- (c) after the definition of “liable relative” insert—
  - ““ordinary clothing and footwear” means clothing and footwear for normal daily use but does not include school uniforms;”;
- (d) in the definition of “payment”—
  - (i) omit “including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by the claimant but only from the date on which it could be expected to be acquired were an application made;”;
  - (ii) for paragraph (d) substitute—
    - “(d) made to a third party, or in respect of a third party, unless the payment is—
      - (i) in relation to the claimant or the claimant’s family; and
      - (ii) the payment is in respect of food, ordinary clothing or footwear, fuel, rent, housing costs, council tax or water charges;”;
- (e) in the definition of “periodical payment”—
  - (i) in paragraph (a) omit “in pursuance of a court order or agreement for maintenance”;
  - (ii) in paragraph (c), for “not exceeding” substitute “, after the appropriate disregard under paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) has been applied to it, that does not exceed”.
- (8) In regulation 120 (treatment of liable relative payments) for “except where regulation 126(1) (liable relative payments to be treated as capital) applies” substitute “paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings)”.
- (9) For regulation 123 substitute—

**“Period over which payments other than periodical payments are to be taken into account**

**123.**—(1) The period over which a payment other than a periodical payment (a “non-periodical payment”) is to be taken into account shall be determined as follows.

(2) Except in a case where paragraph (4) applies, the number of weeks over which a non-periodical payment is to be taken into account shall be equal to the number obtained by dividing that payment by the amount referred to in paragraph (3).

(3) The amount is the aggregate of £2 and—

- (a) the amount of employment and support allowance that would be payable had no payment been made, and
- (b) where applicable, the maximum amount of disregard that would apply to the payment under paragraph 60 of Schedule 8.

(4) This paragraph applies in a case where a liable relative makes a periodical payment and a non-periodical payment concurrently and the weekly amount of the periodical payment (as calculated in accordance with regulation 124) is less than B.

(5) In a case where paragraph (4) applies, the non-periodical payment shall, subject to paragraphs (6) and (7), be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{A}{B - C}$$

(6) If the liable relative ceases to make periodical payments, the balance (if any) of the non-periodical payment shall be taken into account over the number of weeks equal to the number obtained by dividing that balance by the amount referred to in paragraph (3).

(7) If the amount of any subsequent periodical payment varies, the balance (if any) of the non-periodical payment shall be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{D}{B - E}$$

(8) The period under paragraph (2) or (4) shall begin on the date on which the payment is treated as paid under regulation 125 (date on which a liable relative payment is to be treated as paid) and the period under paragraph (6) or (7) shall begin on the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

(9) Any fraction which arises by applying a calculation or formula referred to in this regulation shall be treated as a corresponding fraction of a week.

(10) In paragraphs (4) to (7)—

- A = the amount of the non-periodical payment;
- B = the aggregate of £2 and the amount of employment and support allowance that would be payable had the periodical payment not been made and, where applicable, the maximum disregard under paragraph 60 of Schedule 8;
- C = the weekly amount of the periodical payment;
- D = the balance (if any) of the non-periodical payment;
- E = the weekly amount of any subsequent periodical payment.”.

(10) In paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) for sub-paragraphs (3) and (4) substitute—

“(3) No more than £20 shall be disregarded in respect of each week to which any payment of child maintenance is attributed in accordance with regulations 120 to 125 (child maintenance and liable relatives).

(4) In this paragraph, “child maintenance” shall have the same meaning as in regulation 119.”.