STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 9

AMOUNTS OF ALLOWANCE

CHAPTER 2

Deductions from the contributory allowance

Permanent health insurance

72.—(1) For the purposes of sections 2(1)(c) and 3 of the Act (deductions from contributory allowance) pension payment is to include a permanent health insurance payment.

(2) In this regulation "permanent health insurance payment" means any periodical payment arranged by an employer under an insurance policy providing benefits in connection with physical or mental illness or disability, in relation to a former employee on the termination of that person's employment.

Councillor's allowance

73. For the purposes of section 3(1)(c) of the Act—

(a) a councillor's allowance is a payment of a prescribed description; and

(b) the prescribed bodies carrying out public or local functions are those councils referred to in the definition of "councillor".

Deductions for pension payment and PPF payment

74.—(1) Where—

(a) claimant is entitled to a contributory allowance in respect of any period of a week or part of a week;

(b) there is—

(i) a pension payment;

(ii) a PPF periodic payment; or

(iii) any combination of the payments specified in paragraphs (i) and (ii),

payable to that person in respect of that period (or a period which forms part of that period or includes that period or part of it); and

(c) the amount of the payment, or payments when taken together, exceeds—

(i) if the period in question is a week, £85.00; or

(ii) if that period is not a week, such proportion of the amount mentioned in paragraph (i) as falls to be calculated in accordance with regulation 94(1) or (6) (calculation of weekly amount of income),

the amount of that allowance is to be reduced by an amount equal to 50% of the excess.

(2) For the purposes of this Chapter "payment" means a payment or payments, as the case may be, referred to in paragraph (1)(b).

Payments treated as not being payments to which section 3 applies

75. The following payments are to be treated as not being payments to which section 3 applies—

(a) any pension payment made to a claimant as a beneficiary on the death of a member of any pension scheme;

(b) any PPF periodic payment made to a claimant as a beneficiary on the death of a person entitled to such a payment;

(c) where a pension scheme is in deficit or has insufficient resources to meet the full pension payment, the extent of the shortfall;

(d) any pension payment made under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003(**1**);

(e) any guaranteed income payment;

(f) any permanent health insurance payment in respect of which the employee had contributed to the premium to the extent of more than 50%.

Deductions for councillor's allowance

76.—(1) Where the net amount of councillor's allowance to which a claimant is entitled in respect of any week exceeds £88.50, an amount equal to the excess is to be deducted from the amount of a contributory allowance to which that person is entitled in respect of that week, and only the balance remaining (if any) is to be payable.

(2) In paragraph (1) "net amount", in relation to any councillor's allowance to which a claimant is entitled, means the aggregate amount of the councillor's allowance or allowances, or remuneration to which that claimant is entitled for the week in question, reduced by the amount of any payment in respect of expenses wholly, exclusively and necessarily incurred by that claimant, in that week, in the performance of the duties of a councillor.

Date from which payments are to be taken into account

77. Where regulations 74(1) and 76(1) apply, deductions must have effect, calculated where appropriate in accordance with regulation 94(1) or (6), from the first day of the benefit week in which the payment or councillor's allowance is paid to a claimant who is entitled to a contributory allowance in that week.

Date from which a change in the rate of the payment takes effect

78. Where a payment or councillor's allowance is already being made to a claimant and the rate of that payment or that allowance changes, the deduction at the new rate must take effect, calculated where appropriate in accordance with regulation 94(1) or (6), from the first day of the benefit week in which the new rate of the payment or councillor's allowance is paid.

(**1**) 2003 c. 1.

Calculation of payment made other than weekly

79.—(1) Where the period in respect of which a payment or councillor's allowance is paid is otherwise than weekly, an amount calculated or estimated in accordance with regulation 94(1) or (6) is to be regarded as the weekly amount of that payment or allowance.

(2) In determining the weekly payment, where two or more payments are payable to a claimant, each payment is to be calculated separately in accordance with regulation 94(1) or (6) before aggregating the sum of those payments for the purposes of the reduction of a contributory allowance in accordance with regulation 74.