STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 9

AMOUNTS OF ALLOWANCE

CHAPTER 1

Prescribed amounts

Special cases

69.—(1) In the case of a claimant to whom any paragraph in column (1) of Schedule 5 applies (amounts in special cases), the amount in respect of the claimant is to be the amount in the corresponding paragraph in column (2) of that Schedule.

(2) In Schedule 5—

"partner of a person subject to immigration control" means a person—

(a) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act; or

(b) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 [F1]; and

(c) who is a member of a couple and the member's partner is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to the partner for the purposes of exclusion from entitlement to an income-related allowance;

"patient" means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005 [F2];

"person from abroad" has the meaning given in regulation 70;

"person in hardship" means a person who satisfies regulation 158 but only for a period not exceeding 6 weeks;

"prisoner" means a person who—

(a) is detained in custody pending trial or sentence on conviction or under a sentence imposed by a court; or

(b) is on temporary release in accordance with the provisions of the Prison Act 1952 [F3] or the Prisons (Scotland) Act 1989 [F4],

other than a person who is detained in hospital under the provisions of the Mental Health Act 1983 [F5] or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 [F6] or the Criminal Procedure (Scotland) Act 1995 [F7].

[[F8](3) In Schedule 5 "person serving a sentence of imprisonment detained in hospital" means a person ("P") who satisfies either of the following conditions.

(4) The first condition is that—

(a) P 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

(b) in any case where there is in relation to P a release date within the meaning of section 50(3) of that Act, P 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 P 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).**]**

Textual Amendments

F1 S.I. 2000/636.

F2 S.I. 2005/3360.

F3 1952 c. 52.

F4 1989 c. 45.

F5 1983 c. 20.

F6 2003 asp. 13.

F7 1995 c. 46.

F8 Reg. 69(3)-(5) added (25.3.2010) by The Social Security (Persons Serving a Sentence of Imprisonment Detained in Hospital) Regulations 2010 (S.I. 2010/442), regs. 1, **5(2)**

Changes to legislation:
There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 69.