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STATUTORY INSTRUMENTS

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**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(1); 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(2);

“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(3) or the Prisons (Scotland) Act 1989(4),

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(1) S.I. 2000/636.  
(2) S.I. 2005/3360.  
(3) 1952 c. 52.  
(4) 1989 c. 45.

other than a person who is detained in hospital under the provisions of the Mental Health Act 1983<sup>(5)</sup> or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(6)</sup> or the Criminal Procedure (Scotland) Act 1995<sup>(7)</sup>.

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(5) 1983 c. 20.  
(6) 2003 asp. 13.  
(7) 1995 c. 46.