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STATUTORY RULES OF NORTHERN IRELAND

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**1992 No. 78**

**SOCIAL SECURITY**

**The Disability Working Allowance (General)  
Regulations (Northern Ireland) 1992**

*Made* - - - - *2nd March 1992*

*Coming into operation* *7th April 1992*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 21(1), (5)(bb), (6A)(d), (6C) to (6F), (11) and (12), 22(3B) and (6)(aa), 23(1) and (5) to (9) and 28B(2) and (4) of the Social Security (Northern Ireland) Order 1986(1) and of all other powers enabling it in that behalf, hereby makes the following regulations:

**PART I  
GENERAL**

**Citation and commencement**

1. These regulations may be cited as the Disability Working Allowance (General) Regulations (Northern Ireland) 1992 and shall come into operation on 7th April 1992.

**Interpretation**

2. In these regulations—

“the Order” means the Social Security (Northern Ireland) Order 1986;

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(1) [S.I. 1986/1888 \(N.I. 18\)](#); Article 21(1) was amended by Article 8(2) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 ([S.I. 1991/1712 \(N.I. 17\)](#)), paragraph (5)(bb) was inserted by Article 10(1) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991, paragraphs (6A) and (6C) to (6F) were inserted by Article 8(4) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991, paragraph (11) was amended by Article 7(1) of the Social Security (Northern Ireland) Order 1989 ([S.I. 1989/1342 \(N.I. 13\)](#)) and Article 8(6) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991, paragraph (12) was amended by Article 15(2) of the Social Security (Northern Ireland) Order 1989 and Article 8(7) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991. Article 22(3B) was inserted by Article 8(8) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 and paragraph (6)(aa) was inserted by Article 8(9) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991. Article 28B was inserted by Article 9 of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991. Article 81(1) provides for section 155(1) to (3A) of the Social Security (Northern Ireland) Act 1975 ([c. 15](#)) (extent of powers) to apply to the regulation making powers conferred by this Order; section 155(3A) was inserted by Article 63(1)

“adjudication officer” means an officer appointed in accordance with section 97(1) of the principal Act<sup>(2)</sup>;

“assessment period” means such period as is prescribed in regulations 16 to 19 over which income falls to be calculated;

“attendance allowance” means—

- (a) an attendance allowance under section 35 of the principal Act<sup>(3)</sup>;
- (b) an increase of disablement pension under section 61 or 63 of that Act<sup>(4)</sup>;
- (c) a payment under regulations made in exercise of the power conferred by section 150(3)(b) of that Act;
- (d) a payment analogous to a payment by way of an increase of an allowance in respect of constant attendance under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975<sup>(5)</sup>;
- (e) a payment by virtue of Article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983<sup>(6)</sup> or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

“child” has the meaning assigned to it by Article 21(11) of the Order;

“claim” means a claim for disability working allowance;

“claimant” means a person claiming disability working allowance;

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

“community charge benefit” means community charge benefit under Part II of the Social Security Act 1986<sup>(7)</sup>;

“concessionary payment” means a payment made under arrangements made by the Department with the consent of the Department of Finance and Personnel which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the principal Act, the Order or the Child Benefit (Northern Ireland) Order 1975<sup>(8)</sup> are charged;

“date of claim” means the date on which the claimant makes, or is treated as making, a claim for disability working allowance;

“earnings” has the meaning prescribed in regulation 21 or, as the case may be, regulation 24;

“employed earner” means a person who is gainfully employed in Northern Ireland or the Republic of Ireland either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E or, as the case may be,

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- (2) Section 97(1) was substituted by paragraph 1 of Schedule 1 to the Social Security Adjudications (Northern Ireland) Order 1983 (S.I. 1983/1524 (N.I. 17)) and amended by paragraph 3(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15))
  - (3) Section 35 was amended by Article 3 of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)), paragraph 8 of Schedule 1 to the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)), Article 3 of the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I.2)), paragraph 5 of Schedule 8 to the Social Security (Northern Ireland) Order 1989, Article 3(1) and (2) of the Social Security (Northern Ireland) Order 1990 and Article 4(1) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991
  - (4) Section 61 was amended by paragraph 6 of Schedule 3 to the Social Security (Northern Ireland) Order 1986
  - (5) 1975 c. 16; section 5 was amended by section 16(8)(a) and (10) of the Social Security Act 1990 (c. 27)
  - (6) S.I. 1983/686; the relevant amending instrument is S.I. 1984/1675
  - (7) 1986 c. 50; relevant amending provision is Schedule 10 to the Local Government Finance Act 1988 (c. 41)
  - (8) S.I. 1975/1504 (N.I. 16)

chargeable under the legislation of the Republic of Ireland which is analogous to income tax under Schedule E;

“the Independent Living Fund” means the charitable trust established out of funds provided by the Secretary of State for Social Security for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

“lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child or young person;

“the Macfarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State for Social Security, for the benefit of certain persons suffering from haemophilia;

“the Macfarlane (Special Payments) (No. 2) Trust” means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State for Social Security, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

“the Macfarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State for Social Security to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

“mobility allowance” means an allowance under section 37A of the principal Act<sup>(9)</sup>;

“mobility supplement” means any supplement under Article 26A of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983<sup>(10)</sup> including such a supplement by virtue of any other scheme or order or under Article 25A of the Personal Injuries (Civilians) Scheme 1983<sup>(11)</sup>;

“net earnings” means such earnings as are calculated in accordance with regulation 22;

“net profit” means such profit as is calculated in accordance with regulation 25;

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

“partner” means, where a claimant—

- (a) is a member of a married or unmarried couple, the other member of that couple;
- (b) is married polygamously to two or more members of the same household, any such member;

“payment” includes a part of a payment;

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

“premises” where it appears in Schedules 3 and 4 means a dwelling, including any garage, garden and out-buildings together with any agricultural land adjoining that dwelling and any land not adjoining that dwelling which it is impracticable or unreasonable to sell separately;

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(9) Section 37A was inserted by Article 24(1) of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)) and was amended by Article 4 of the Social Security (Northern Ireland) Order 1979, Article 72(1) to (3) of, and Schedule 10 to, the Social Security (Northern Ireland) Order 1986 and by Article 10 of the Social Security (Northern Ireland) Order 1989 and is repealed with effect from 6th April 1992 by Article 4(3) of, and Schedule 4 to, the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(10) S.I. 1983/883; Article 26A was inserted by S.I. 1983/1116 and amended by S.I. 1983/1521, S.I. 1986/592, S.I. 1990/1308 and S.I. 1991/766

(11) Article 25A was inserted by S.I. 1983/1164 and amended by S.I. 1983/1540, S.I. 1986/628 and S.I. 1991/708

“self-employed earner” means a person who is gainfully employed in Northern Ireland or the Republic of Ireland otherwise than in employed earner’s employment (whether or not he is also employed in such employment);

“single claimant” means a claimant who neither has a partner nor is a lone parent;

“student” has the meaning prescribed in regulation 41;

“week” means a period of seven days beginning with midnight between Saturday and Sunday;

“week of claim” means the week which includes the date of claim;

“year of assessment” has the meaning prescribed in section 832(1) of the Income and Corporation Taxes Act 1988(12);

“young person” has the meaning prescribed in regulation 8.

## PART II

### DISABILITY TEST

#### **Person at a disadvantage in getting a job**

3.—(1) A person has a disability which puts him at a disadvantage in getting a job where—

- (a) in respect of an initial claim one or more of the paragraphs in Schedule 1 apply to him;
- (b) in respect of a repeat claim one or more of the paragraphs in Part I or II of Schedule 1 apply to him.

(2) In this regulation and in regulation 4, the expressions “initial claim” and “repeat claim” have the same meanings as in Article 28B(1) of the Order (supplementary provisions about disability working allowance).

#### **Declaration by claimant**

4. On an initial claim, a declaration by the claimant that he has a physical or mental disability which puts him at a disadvantage in getting a job is not conclusive that for the purposes of Article 21(6A)(b) of the Order (income-related benefits) he has a disability, where—

- (a) the claim itself contains contrary indications; or
- (b) the adjudication officer has before him other evidence which contradicts that declaration.

## PART III

### PRESENCE IN NORTHERN IRELAND AND REMUNERATIVE WORK

#### **Circumstances in which a person is treated as being or as not being in Northern Ireland**

5.—(1) A person shall be treated as being in Northern Ireland if, on the date of claim—

- (a) he is present and ordinarily resident in Northern Ireland;
- (b) his partner, if he has one, is ordinarily resident in the United Kingdom;
- (c) his earnings derive at least in part from remunerative work in the United Kingdom or the Republic of Ireland; and

(d) his earnings do not wholly derive from remunerative work outside the United Kingdom or the Republic of Ireland nor do the earnings of his partner, if he has one.

(2) A person shall be treated as not being in Northern Ireland during any period for which he, or his partner, is entitled to be paid disability working allowance or family credit under the law of Great Britain.

### **Remunerative work**

6.—(1) Subject to paragraph (3), for the purposes of Article 21(6A)(a) of the Order a person shall be treated as engaged and normally engaged in remunerative work where—

- (a) the work he undertakes is for not less than 16 hours per week;
- (b) the work is done for payment or in expectation of payment; and
- (c) he is employed at the date of claim and satisfies the requirements of paragraph (5).

(2) A person who does not satisfy all the requirements of paragraph (1) shall not be treated as engaged and normally engaged in remunerative work.

(3) A person who otherwise satisfies all the requirements of paragraph (1) shall not be treated as engaged and normally engaged in remunerative work if he is engaged by a charitable or voluntary body or is a volunteer where the only payment received by him, or due to be paid to him, is a payment which is to be disregarded under regulation 27(2) and paragraph 2 of Schedule 3 (sums to be disregarded in the calculation of income other than earnings).

(4) In determining for the purposes of paragraph (1)(a) whether a person has undertaken work of not less than 16 hours per week—

- (a) there shall be included in the calculation any time allowed—
  - (i) for meals or refreshment, or
  - (ii) for visits to a hospital, clinic or other establishment for the purpose only of treating or monitoring the person's disability,but only where the person is, or expects to be, paid earnings in respect of that time; and
- (b) where at the date of claim the claimant has within the previous 5 weeks—

- (i) started a new job,
- (ii) resumed work after a break of at least 13 weeks, or
- (iii) changed his hours,

the hours worked shall be calculated by reference to the number of hours, or where these are expected to fluctuate, the average number of hours, which he is expected to work in a week; or

- (c) where sub-paragraph (b) does not apply, and
  - (i) a recognised cycle of working has been established at the date of claim, the hours worked shall be calculated by reference to the average number of hours worked in a week over the period of one complete cycle (including where the cycle involves periods in which the person does not work, those periods, but disregarding any other absences), or
  - (ii) no recognised cycle of working has been established at that date, the hours worked shall be calculated by reference to the average number of hours worked over the 5 weeks immediately preceding the week in which the claim is made, or such other length of time preceding that week as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(5) Subject to paragraph (6), the requirements of this paragraph are that the person—

- (a) worked not less than 16 hours in—
  - (i) the week of claim, or
  - (ii) either of the 2 weeks immediately preceding the week of claim;
- (b) is expected by his employer to work not less than 16 hours in the week following the week of claim; or
- (c) cannot satisfy the requirements of sub-paragraph (a) or (b) at the date of claim because he is or will be absent from work by reason of a recognised, customary or other holiday but he is expected by his employer to work not less than 16 hours in the week following his return to work,

and for the purposes of calculating the number of hours worked, paragraph (4)(a) shall apply to this paragraph as it applies to paragraph (1)(a).

- (6) For the purposes of paragraph (5), work which a person does only qualifies if—
  - (a) it is the work which he normally does; and
  - (b) it is likely to last for a period of 5 weeks or more beginning with the week in which the claim is made.

#### **Income-related benefits**

7. For the purposes of Article 21(6E) of the Order the prescribed circumstances are that the person's weekly applicable amount included a higher pensioner or disability premium in respect of him, determined—

- (a) in the case of income support, in accordance with paragraphs 10(1)(b) or 11 and 12 of Part III of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(13) (applicable amounts);
- (b) in the case of housing benefit, in accordance with paragraphs 10(1)(b) or 11 and 12 of Part III of Schedule 2 to the Housing Benefit (General) Regulations (Northern Ireland) 1987(14) (applicable amounts); or
- (c) in accordance with any provision equivalent to one of those specified in paragraphs (a) and (b) having effect in Great Britain.

## **PART IV**

### **MEMBERSHIP OF A FAMILY**

#### **Persons of a prescribed description**

8.—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of Article 21(11) of the Order as it applies to disability working allowance is a person aged 16 or over but under 19 who is receiving full-time education within Article 4(1)(b) of the Child Benefit (Northern Ireland) Order 1975(15) (meaning of child), and in these regulations such a person is referred to as “a young person”.

- (2) Paragraph (1) shall not apply to a person—
  - (a) who is entitled to income support or would, but for Article 21(9) of the Order, be so entitled;

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(13) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 Nos. 146 and 431, S.R. 1989 No. 395, S.R. 1990 No. 387 and S.R. 1992 No. 6

(14) S.R. 1987 No. 461; relevant amending regulations are S.R. 1988 No. 424, S.R. 1990 No. 136 and S.R. 1992 No. 6

(15) Article 4(1)(b) was amended by Article 71(1)(a) of the Social Security (Northern Ireland) Order 1986

- (b) who is receiving advanced education within the meaning of regulation 1(2) of the Child Benefit (General) Regulations (Northern Ireland) 1979<sup>(16)</sup> (interpretation); or
- (c) who has ceased to receive full-time education but is to continue to be treated as a child by virtue of regulation 7 of those regulations.

### **Circumstances in which a person is to be treated as responsible or not responsible for another**

9.—(1) Subject to paragraphs (2) and (3), a person shall be treated as responsible for a child or young person who is normally living with him.

(2) Where a child or young person spends equal amounts of time in different households, or where there is a question as to which household he is living in, the child or young person shall be treated for the purposes of paragraph (1) as normally living with—

- (a) the person who is receiving child benefit under Part II of the Child Benefit (Northern Ireland) Order 1975 in respect of him; or
- (b) if there is no such person—
  - (i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or
  - (ii) in any other case the person who has primary responsibility for him.

(3) For the purposes of these regulations a child or young person shall be treated as the responsibility of only one person during the period of an award and any person other than the one treated as responsible for the child or young person under the foregoing paragraphs shall be treated as not so responsible.

### **Membership of the same household**

10.—(1) Except in a case to which paragraph (2) applies, where a claimant or any partner is treated as responsible for a child or young person by virtue of regulation 9 (circumstances in which a person is to be treated as responsible or not responsible for another), that child or young person and any child of that child or young person shall be treated as a member of the claimant's household.

(2) A child or young person shall not be treated as a member of the claimant's household in any case where the child or young person—

- (a) is a patient or in residential accommodation on account of physical or mental handicap or physical or mental illness and has been so accommodated for the 12 weeks immediately before the date of claim and is no longer in regular contact with the claimant or any member of the claimant's household;
- (b) has been boarded out with the claimant or his partner prior to adoption;
- (c) is boarded out with the claimant or his partner under a relevant enactment;
- (d) has been placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989<sup>(17)</sup>;
- (e) is detained in custody under a sentence imposed by a court; or
- (f) is in a training school within the meaning of section 137 of the Children and Young Persons Act (Northern Ireland) 1968<sup>(18)</sup> (approval of schools).

(3) In this regulation—

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<sup>(16)</sup> S.R. 1979 No. 5; relevant amending regulations are S.R. 1980 No. 261, S.R. 1982 No. 114, S.R. 1987 No. 130 and S.R. 1988 No. 273

<sup>(17)</sup> S.R. 1989 No. 253

<sup>(18)</sup> 1968 c. 34 (N.I.)

- (a) “patient” means a person (other than a person who is serving a sentence imposed by a court in a prison, young offenders centre or a training school) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975(19);
- (b) “relevant enactment” means the Guardianship of Infants Act 1886(20), the Army Act 1955(21), the Air Force Act 1955(22), the Naval Discipline Act 1957(23), the Children and Young Persons Act (Northern Ireland) 1968, the Health and Personal Social Services (Northern Ireland) Order 1972(24), the Family Law Reform (Northern Ireland) Order 1977(25), the Matrimonial Causes (Northern Ireland) Order 1978(26), the Domestic Proceedings (Northern Ireland) Order 1980(27) and the Adoption (Northern Ireland) Order 1987(28);
- (c) “residential accommodation” means accommodation for a person whose stay in the accommodation has become other than temporary which is provided under—
  - (i) Article 15 (general social welfare) or 36 (accommodation for persons in need in premises maintained by certain persons) of the Health and Personal Social Services (Northern Ireland) Order 1972(29), or
  - (ii) Article 7 (prevention of illness, care and after-care) or 8 (care of mothers and young children) of that Order.

### **Circumstances in which a person is to be treated as being no longer a member of the same household**

11.—(1) Where one member of a married or unmarried couple has taken up residence in accommodation provided under Article 15 or 36 of the Health and Personal Social Services (Northern Ireland) Order 1972 he shall be treated as no longer being a member of the same household as his partner unless the stay in that accommodation is temporary.

(2) Where one of the members of a married or unmarried couple is a hospital patient or detained in legal custody he shall not be treated, on this account, as ceasing to be a member of the same household as his partner—

- (a) unless he has been a patient in a hospital for 52 weeks or more;
- (b) unless he is a patient detained in a hospital provided under Article 110 of the Mental Health (Northern Ireland) Order 1986(30) (provision of special accommodation by Department); or
- (c) unless he is detained in legal custody whilst serving a sentence of 52 weeks or more imposed by a court,

but shall be treated as not being a member of the same household as his partner wherever the conditions in sub-paragraph (a), (b) or (c) are fulfilled.

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(19) S.R. 1975 No. 109; relevant amending regulations are S.R. 1987 No. 391

(20) 1886 c. 27

(21) 1955 c. 18

(22) 1955 c. 19

(23) 1957 c. 53

(24) S.I. 1972/1265 (N.I. 14)

(25) S.I. 1977/1250 (N.I. 17)

(26) S.I. 1978/1045 (N.I. 15)

(27) S.I. 1980/563 (N.I. 5)

(28) S.I. 1987/2203 (N.I. 22)

(29) Article 15 was extended by Article 11(1) of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) and sections 1 and 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53) and Article 36 was amended by Article 11(2) of the said Order

(30) S.I. 1986/595 (N.I. 4)



(3) In this regulation “patient” has the same meaning as in regulation 10(3)(a) (membership of the same household).

## PART V

### INCOME AND CAPITAL

#### CHAPTER I:

##### *GENERAL*

#### **Calculation of income and capital of members of claimant’s family and of a polygamous marriage**

**12.**—(1) The income and capital of a claimant’s partner and, subject to regulation 30 (modifications in respect of children and young persons), the income of a child or young person, which by virtue of Article 23(5) of the Order (calculation) is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the “claimant” shall, except where the context otherwise requires, be construed, for the purposes of this Part, as if it included a reference to his partner or that child or young person.

(2) Where a claimant or the partner of a claimant is married polygamously to two or more members of the same household—

- (a) the claimant shall be treated as possessing capital and income belonging to each such member and the income of any child or young person who is one of that member’s family; and
- (b) the income and capital of that member or, as the case may be, the income of that child or young person shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant or, as the case may be, as for any child or young person who is a member of his family.

#### **Calculation of income and capital of students**

**13.** The provisions of Chapters II to VI of this Part (income and capital) shall have effect in relation to students and their partners subject to the modifications set out in Chapter VII (students) thereof.

#### **Rounding of fractions**

**14.** Where any calculation under this Part results in a fraction of a penny that fraction shall, if it would be to the claimant’s advantage, be treated as a penny, otherwise it shall be disregarded.

#### CHAPTER II:

##### *NORMAL WEEKLY INCOME*

#### **Calculation of income on a weekly basis**

**15.**—(1) For the purposes of Article 21(6A) of the Order, the income of a claimant shall be calculated on a weekly basis—

- (a) by ascertaining in accordance with this Chapter and Chapter V of this Part (other income) the amount of his normal weekly income; and

(b) by adding to that amount the weekly income calculated under regulation 40 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) “income” includes capital treated as income under regulation 28 (capital treated as income) and income which a person is treated as possessing under regulation 29 (notional income).

### **Normal weekly earnings of employed earners**

**16.**—(1) Subject to regulation 19 (periods to be disregarded), where a claimant’s income consists of earnings from employment as an employed earner, his normal weekly earnings shall be determined by reference to his earnings from that employment in accordance with paragraphs (2) to (9).

(2) Subject to paragraph (7), where a claimant is paid weekly, his normal weekly earnings shall be determined by reference to his earnings over 5 consecutive weeks in the 6 weeks immediately preceding the week in which the date of claim falls.

(3) Subject to paragraph (7), where at the date of claim there is a trade dispute or period of short-time working at a claimant’s place of employment, then his normal weekly earnings shall be determined by reference to his earnings over the 5 weeks immediately preceding the start of that dispute or period of short-time working.

(4) Subject to paragraph (7), where a claimant is paid monthly, his normal weekly earnings shall be determined by reference to his earnings—

(a) over a period of 2 months immediately preceding the week in which the date of claim falls; or

(b) where, at the date of claim, there is a trade dispute or a period of short-time working at his place of employment, over a period of 2 months immediately preceding the date of the start of that dispute or period of short-time working.

(5) Subject to paragraph (7), whether or not paragraph (2), (3) or (4) applies, where a claimant’s earnings fluctuate or are not likely to represent his weekly earnings, his normal weekly earnings shall be determined by reference to his weekly earnings over such other period preceding the week in which the date of claim falls as may, in any particular case, enable his normal weekly earnings to be determined more accurately.

(6) Where a claimant’s earnings include a bonus or commission which is paid within 52 weeks preceding the week in which the date of claim falls, and the bonus or commission is paid separately or relates to a period longer than the period relating to the other earnings with which it is paid, his normal weekly earnings shall be treated as including an amount calculated in accordance with regulation 23 (calculation of bonus or commission).

(7) Where at the date of claim—

(a) the claimant—

(i) has been in his employment,

(ii) after a continuous period of interruption exceeding 13 weeks, has resumed his employment, or

(iii) has changed the number of hours for which he is contracted to work; and

(b) the period of his employment or the period since he resumed his employment or the period since the change in the number of hours took place, as the case may be, is less than 9 weeks,

his normal weekly earnings shall be determined in accordance with paragraph (8).

(8) In a case to which this paragraph applies, the Department shall require the claimant’s employer to furnish an estimate of the claimant’s average likely earnings for the period for which he will normally be paid and the claimant’s normal weekly earnings shall be determined by reference to that estimate.

- (9) For the purposes of this regulation—
- (a) the claimant’s earnings shall be calculated in accordance with Chapter III of this Part; and
  - (b) “a period of short-time working” means a continuous period not exceeding 13 weeks during which the claimant is not required by his employer to be available to work the full number of hours normal in his case under the terms of his employment.

**Normal weekly earnings of self-employed earners**

17.—(1) Subject to regulation 19 (periods to be disregarded), where a claimant’s income consists of earnings from employment as a self-employed earner, his normal weekly earnings shall be determined, subject to paragraph (2), by reference to his weekly earnings from that employment—

- (a) except where sub-paragraph (b) applies, over a period of 26 weeks immediately preceding the week in which the date of claim falls;
- (b) where the claimant provides in respect of the employment a profit and loss account and, where appropriate, a trading account or a balance sheet or both, and the profit and loss account is in respect of a period of at least 6 months but not exceeding 15 months and that period terminates within the 12 months preceding the date of claim, over that period; or
- (c) over such other period of weeks preceding the week in which the date of claim falls as may, in any particular case, enable his normal weekly earnings to be determined more accurately.

(2) In paragraph (1)(b)—

- (a) “balance sheet” means a statement of the financial position of the employment disclosing its assets, liabilities and capital at the end of the period in question;
- (b) “profit and loss account” means a financial statement showing the net profit or loss of the employment for the period in question; and
- (c) “trading account” means a financial statement showing the revenue from sales, the cost of those sales and the gross profit arising during the period in question.

(3) Subject to regulation 19, where the claimant has been in employment as a self-employed earner for less than the period specified in paragraph (1)(a), his normal weekly earnings shall be determined by reference to an estimate of his likely weekly earnings over the 26 weeks following the date of claim.

(4) For the purposes of this regulation, the claimant’s earnings shall be calculated in accordance with Chapter IV of this Part.

**Normal weekly income other than earnings**

18.—(1) Subject to paragraph (2), a claimant’s normal weekly income which does not consist of earnings shall be determined by reference to his weekly income over a period of 26 weeks immediately preceding the week in which the date of claim falls or over such period immediately preceding that week as may, in any particular case, enable his normal weekly income to be determined more accurately.

(2) Where a claimant’s income consists of any payments made by a person, whether under a court order or not, for the maintenance of any member of his family, and those payments are made or due to be made at regular intervals, his normal weekly income shall be determined—

- (a) if before the date of claim those payments are made at regular intervals, by reference to the normal weekly amount; or
- (b) if they are not so made, by reference to the average of such payments received in the 13 weeks immediately preceding the week in which the date of claim falls.

(3) For the purposes of this regulation, income other than earnings shall be calculated in accordance with Chapter V of this Part.

### **Periods to be disregarded**

**19.** For the purposes of ascertaining a claimant's normal weekly earnings there shall be disregarded—

- (a) for the purposes of regulation 16(1) (normal weekly earnings of employed earners), in the case of an employed earner—
  - (i) any period in the assessment period where the earnings of the claimant are irregular or unusual, and
  - (ii) any period in the assessment period in which a bonus or commission to which regulation 16(6) applies is paid where that bonus or commission is in respect of a period longer than the period relating to the other earnings with which it is paid; or
- (b) in the case of a self-employed earner, any week or period of weeks in the assessment period during which no activities have been carried out for the purposes of the business,

and his normal weekly earnings shall be determined by reference to his weekly earnings in the remainder of that period and in such a case any reference in these regulations to a claimant's assessment period shall be construed as a reference to the latter period.

### **Calculation of weekly amount of income**

**20.—(1)** For the purposes of regulations 16 (normal weekly earnings of employed earners) and 18 (normal weekly income other than earnings), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment; or
- (b) exceeds a week, the weekly amount shall be determined—
  - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52,
  - (ii) in a case where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52,
  - (iii) in a case where that period is a year, by dividing the amount of the payment by 52, or
  - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) For the purposes of regulation 17 (normal weekly earnings of self-employed earners) the weekly amount of earnings of a claimant shall be determined—

- (a) except where sub-paragraph (b) applies, by dividing his earnings received in the assessment period or, as the case may be, estimated for that period by the number equal to the number of weeks in that period;
- (b) in a case where regulation 17(1)(b) applies, by multiplying his earnings relevant to the assessment period (whether or not received in that period) by 7 and dividing the product by the number equal to the number of days in that period.

CHAPTER III:

## EMPLOYED EARNERS

### Earnings of employed earners

**21.**—(1) Subject to paragraph (2), “earnings” means in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any holiday pay except any payable more than 4 weeks after termination of the employment;
- (c) any payment by way of a retainer;
- (d) any payment made by the claimant’s employer in respect of any expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant’s employer in respect of—
  - (i) travelling expenses incurred by the claimant between his home and place of employment, or
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant’s absence from home;
- (e) any award of compensation made under Article 32(2)(a) or (5) of the Industrial Relations (Northern Ireland) Order 1976(31) (enforcement of Article 31 order and compensation);
- (f) any such sum as is referred to in Article 14(2) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(32) (certain sums to be earnings for social security purposes);
- (g) any statutory sick pay under Part II of the Social Security (Northern Ireland) Order 1982(33);
- (h) any statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982(34);
- (i) any payment made under the legislation of, or under any scheme operating in, the Republic of Ireland which is analogous to income to which sub-paragraphs (e) to (h) relate.

(2) Earnings shall not include—

- (a) subject to paragraph (3) any payment in kind;
- (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment; or
- (c) any occupational pension.

(3) Where living accommodation is provided for a claimant by reason of his employment, the claimant shall be treated as being in receipt of weekly earnings of an amount equal to—

- (a) where no charge is made in respect of the provision of that accommodation, £12; or
- (b) where a charge is made and that weekly charge is less than £12, the amount of the difference,

except that where the claimant satisfies the adjudication officer that the weekly value to him of the provision of that accommodation is an amount less than the amount in sub-paragraph (a) or (b), as the case may be, he shall be treated as being in receipt of that lesser value.

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(31) S.I. 1976/1043 (N.I. 16); Article 32(2)(a) and (5) was amended by paragraph 4(5) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987 (S.I. 1987/936 (N.I. 9))

(32) S.I. 1977/610 (N.I. 11); Article 14(2) was amended by paragraph 49 of Schedule 9 to, and Schedule 10 to, the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18))

(33) S.I. 1982/1084 (N.I. 16)

(34) 1982 c. 24

### Calculation of net earnings of employed earners

**22.**—(1) For the purposes of regulation 16 (normal weekly earnings of employed earners), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

(2) There shall be disregarded from a claimant's net earnings, any sum, where applicable, specified in Schedule 2 (sums to be disregarded in the calculation of earnings).

(3) For the purposes of paragraph (1), net earnings shall, except where paragraph (4) applies, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax, and
  - (ii) primary Class 1 contributions under the principal Act<sup>(35)</sup>; and
- (b) one half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.

(4) Where the earnings of a claimant are estimated under regulation 16(8), his net earnings shall be calculated by taking into account those earnings over the assessment period, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259 of the Income and Corporation Taxes Act 1988<sup>(36)</sup> (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
- (b) an amount in respect of primary Class 1 contributions under the principal Act equivalent to an amount calculated by applying to those earnings the appropriate primary percentage applicable at the date of claim; and
- (c) one half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

(5) Where the claimant is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary Class 1 contributions under this regulation shall be such amounts as, in the opinion of the adjudication officer, would have been deducted had the claimant been employed in Northern Ireland.

### Calculation of bonus or commission

**23.** Where a claimant's earnings include a bonus or commission to which regulation 16(6) (normal weekly earnings of employed earners) applies that part of his earnings shall be calculated by aggregating any payments of bonus or commission and dividing that sum by 52, less—

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(35) See sections 1 and 4 of the Social Security (Northern Ireland) Act 1975 (c. 15); section 1 was amended by Schedule 10 to the Social Security (Northern Ireland) Order 1986, Schedule 9 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)), Article 18(1) and (2) of, and Schedule 7 to, the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15)), Schedule 2 to the Redundancy Fund (Abolition) (Northern Ireland) Order 1991 (S.I. 1991/196 (N.I. 2)) and Article 3(2) and (3) of the Social Security (Contributions) (Northern Ireland) Order 1991 (S.I. 1991/2294 (N.I. 22)); section 4 was amended by paragraph 18(a) of Schedule 5 to the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)), Article 3(1) of the Social Security and Family Allowances (Northern Ireland) Order 1976 (S.I. 1976/427 (N.I. 9)), Article 11(2) of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)), Schedule 5 to the Social Security (Northern Ireland) Order 1982, Articles 9(1) and (2) and 10 of the Social Security (Northern Ireland) Order 1985 (S.I. 1985/1209 (N.I. 16)), Article 3(1) of, and paragraph 1(1) and (2) of Schedule 7 to, the Social Security (Northern Ireland) Order 1989 and S.R. 1991 No. 542

(36) 1988 c. 1

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to that part of the earnings the basic rate of tax in the year of assessment in which the claim is made;
- (b) an amount in respect of primary Class 1 contributions under the principal Act equivalent to an amount calculated by applying to that part of the earnings the appropriate primary percentage applicable at the date of claim; and
- (c) one half of any sum payable by the claimant in respect of that part of the earnings by way of a contribution towards an occupational or personal pension scheme.

CHAPTER IV:

*SELF-EMPLOYED EARNERS*

**Earnings of self-employed earners**

**24.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance payable pursuant to provision or arrangements made by the Department of Economic Development<sup>(37)</sup> under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945<sup>(38)</sup> or section 1(1) of the Employment and Training Act (Northern Ireland) 1950<sup>(39)</sup> or any equivalent allowance payable under the Republic of Ireland legislation to the claimant for the purpose of assisting him in carrying on his business unless at the date of claim the allowance has been terminated.

(2) Where a claimant is employed in providing board and lodging accommodation for which a charge is payable, any income consisting of payments of such a charge shall only be taken into account under this Chapter as earnings if it forms a major part of the total of the claimant’s weekly income less any sums disregarded under Schedule 3 other than under paragraph 39 of that Schedule.

**Calculation of net profit of self-employed earners**

**25.**—(1) For the purposes of regulation 17 (normal weekly earnings of self-employed earners), the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations (Northern Ireland) 1975<sup>(40)</sup>, his share of the net profit derived from that employment less—
  - (i) an amount in respect of income tax and social security contributions payable under the principal Act calculated in accordance with regulation 26 (deduction of tax and contributions for self-employed earners), and
  - (ii) one half of any qualifying premium payable.

<sup>(37)</sup> See S.R. & O. (N.I.) 1964 No. 205, Article 3 for change in style of Ministry of Labour and National Insurance to Ministry of Health and Social Services; S.R. & O. (N.I.) 1973 No. 504, Article 6 for transfer of functions from Ministry of Health and Social Services to Department of Manpower Services and S.I. 1982/846 (N.I. 11), Article 3 for renaming the Department of Manpower Services the Department of Economic Development

<sup>(38)</sup> 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4(N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

<sup>(39)</sup> 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and by Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

<sup>(40)</sup> S.R. 1975 No. 108; to which there are amendments not relevant to these regulations

(2) There shall be disregarded from a claimant's net profit any sum, where applicable, specified in Schedule 2.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (4), (11) or (12) applies, be calculated by taking into account the earnings of the employment received in the assessment period less—

- (a) subject to paragraphs (7) to (9), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax, and
  - (ii) social security contributions payable under the principal Act, calculated in accordance with regulation 26; and
- (c) one half of any qualifying premium payable.

(4) For the purposes of paragraph (1)(a), in the case where the assessment period is determined under regulation 17(1)(b), the net profit of the employment shall, except where paragraph (11) applies, be calculated by taking into account the earnings of the employment relevant to that period (whether or not received in that period), less—

- (a) subject to paragraphs (7) to (9), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax, and
  - (ii) social security contributions payable under the principal Act, calculated in accordance with regulation 26; and
- (c) one half of any qualifying premium payable.

(5) For the purposes of paragraph (1)(b) the net profit of the employment shall, except where paragraph (6), (11) or (12) applies, be calculated by taking into account the earnings of the employment received in the assessment period less, subject to paragraphs (7) to (9), any expenses wholly and exclusively defrayed in that period for the purposes of that employment.

(6) For the purposes of paragraph (1)(b), in a case where the assessment period is determined under regulation 17(1)(b), the net profit of the employment shall, except where paragraph (11) applies, be calculated by taking into account the earnings of the employment relevant to that period (whether or not received in that period) less, subject to paragraphs (7) to (9), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment.

(7) Subject to paragraph (8), no deduction shall be made under paragraph (3)(a), (4)(a), (5) or (6), as the case may be, in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed, or intended to be employed, in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the assessment period;
- (e) the repayment of capital on any loan taken out for the purposes of the employment; or
- (f) any expenses incurred in providing business entertainment.

(8) A deduction shall be made under paragraph (3)(a), (4)(a), (5) or (6), as the case may be, in respect of the repayment of capital on any loan used for—



- (a) the replacement in the course of business of equipment or machinery;
  - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair; and
  - (c) the purchase of land under the Northern Ireland Land Act 1925(41).
- (9) An adjudication officer shall refuse to make a deduction in respect of any expenses under paragraph (3)(a), (4)(a), (5) or (6), as the case may be, where he is not satisfied that the expense has been defrayed or given the nature and the amount of the expense that it has been reasonably incurred.
- (10) For the avoidance of doubt—
- (a) a deduction shall not be made under paragraph (3)(a), (4)(a), (5) or (6), as the case may be, in respect of any sum unless it has been expended for the purposes of the business;
  - (b) a deduction shall be made thereunder in respect of—
    - (i) the excess of any value added tax paid over value added tax received in the assessment period,
    - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair,
    - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (11) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be one third of the earnings of that employment, less—
- (a) an amount in respect of—
    - (i) income tax, and
    - (ii) social security contributions payable under the principal Act, calculated in accordance with regulation 26; and
  - (b) one half of any qualifying premium payable.
- (12) Where regulation 17(3) applies—
- (a) for the purposes of paragraph (1)(a), the net profit derived from the employment shall be calculated by taking into account the claimant’s estimated and, where appropriate, actual earnings from the employment, less the amount of the deductions likely to be made and, where appropriate, made under paragraph (3)(a) to (c);
  - (b) for the purposes of paragraph (1)(b), his share of the net profit of the employment shall be calculated by taking into account the claimant’s estimated and, where appropriate, his share of the actual earnings from the employment, less the amount of his share of the expenses likely to be deducted and, where appropriate, deducted under paragraph (5); or
  - (c) in the case of employment as a child minder, the net profit of the employment shall be calculated by taking into account one third of the claimant’s estimated and, where appropriate, actual earnings from that employment, less the amount of the deductions likely to be made and, where appropriate, made under paragraph (11)(a) and (b).
- (13) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.
- (14) In this regulation “qualifying premium” means any premium or other consideration payable under an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision for the claimant of a life annuity in old age or the provision of an

annuity for his partner or for any one or more of his dependants and in respect of which relief from income tax may be given.

(15) Where the claimant is a self-employed earner in the Republic of Ireland the amounts to be deducted for income tax and social security contributions under this regulation shall be such amounts as, in the opinion of the adjudication officer, would have been deducted had the claimant been employed in Northern Ireland.

### **Deduction of tax and contributions for self-employed earners**

**26.**—(1) The amount to be deducted in respect of income tax under regulation 25(1)(b)(i), (3)(b)(i), (4)(b)(i) or (11)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income, and as if that income were assessable to income tax at the basic rate of tax in the year of assessment in which the claim was made, less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259 of the Income and Corporation Taxes Act 1988 (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 25(1)(b)(i), (3)(b)(ii), (4)(b)(ii) or (11)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 7(1) or, as the case may be, (4) of the principal Act<sup>(42)</sup> (Class 2 contributions) at the rate applicable at the date of claim except where a claimant's chargeable income is less than the amount specified in section 7(5) of that Act<sup>(43)</sup> for the tax year in which the date of claim falls; but, if the assessment period is less than a year, the amount specified for that tax year shall be calculated on a pro rata basis; and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 9(2) of that Act<sup>(44)</sup> (Class 4 contributions recoverable under Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but, if the assessment period is less than a year, those limits shall be calculated on a pro rata basis.

(3) In this regulation “chargeable income” means—

- (a) except where sub-paragraph (b) or (c) applies, the earnings derived from the employment, less any expenses deducted under regulation 25(3)(a), (4)(a), (5) or (6), as the case may be;
- (b) except where sub-paragraph (c)(iii) applies, in the case of employment as a child minder one third of the earnings of that employment; or
- (c) where regulation 17(3) (normal weekly earnings of self-employed earners) applies—
  - (i) in the case of a self-employed earner who is engaged in employment on his own account, the claimant's estimated earnings from the employment, less the amount of the deductions likely to be made and, where appropriate, made under regulation 25(3)(a),
  - (ii) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations (Northern Ireland) 1975, the claimant's estimated and, where appropriate, his share of the actual earnings from the employment, less the amount

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<sup>(42)</sup> Section 7(1) was amended by Article 3 of the Social Security and Family Allowances (Northern Ireland) Order 1976, Article 11(1) of the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)) and Article 3(a) of S.R. 1991 No. 542

<sup>(43)</sup> Section 7(5) was amended by Article 3(b) of S.R. 1991 No. 542

<sup>(44)</sup> Section 9(2) was amended by Article 5 of S.R. 1982 No. 413 and Article 5 of S.R. 1991 No. 542

of his share of the expenses likely to be deducted and, where appropriate, deducted under regulation 25(5), or

- (iii) in the case of employment as a child minder, one third of the claimant's estimated and, where appropriate, actual earnings from that employment.

CHAPTER V:

## OTHER INCOME

### Calculation of income other than earnings

**27.**—(1) For the purposes of regulation 18 (normal weekly income other than earnings), the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs (2) to (5), be his gross income and any capital treated as income under regulation 28 (capital treated as income).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1) any sum, where applicable, specified in Schedule 3.

(3) Where the payment of any benefit under the benefit Acts is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

(4) Any payment to which regulation 21(2) (earnings of employed earners) applies shall be taken into account as income for the purposes of paragraph (1).

(5) Where a loan is made to a person pursuant to arrangements made under Article 3 of the Education (Student Loans) (Northern Ireland) Order 1990(45), or section 1 of the Education (Student Loans) Act 1990(46) and that person ceases to be a student before the end of the academic year in respect of which the loan is payable, or, as the case may be, before the end of his course, a sum equal to the weekly amount apportionable under regulation 47(2) (treatment of student loans) shall be taken into account under paragraph (1) for each week, in the period over which the loan fell to be apportioned, following the date on which that person ceases to be a student; but in determining the weekly amount apportionable under regulation 47(2) so much of that regulation as provides for a disregard shall not have effect.

### Capital treated as income

**28.**—(1) Any capital payable by instalments which are outstanding at the date of the claim shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI of this Part exceeds £16,000, be treated as income.

(2) Any payment received under an annuity shall be treated as income.

### Notional income

**29.**—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to disability working allowance or increasing the amount of that benefit.

(2) Except in the case of a discretionary trust or a trust derived from a payment made in consequence of a personal injury, any income which would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by the claimant.

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(45) S.I. 1990/1506 (N.I. 11)

(46) 1990 c. 6

(3) Any payment of income, other than a payment of income made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust or the Independent Living Fund, made—

- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall be treated as possessed by that single claimant or member of the family to the extent that it is used for his food, ordinary clothing or footwear, household fuel or housing costs; and in this sub-paragraph "ordinary clothing or footwear" means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities;
- (b) to a single claimant or member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or member of the family to the extent that it is kept by him or used by or on behalf of any member of the family.

(4) Where—

- (a) a claimant performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the adjudication officer shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies him that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary body or is a volunteer if the adjudication officer is satisfied that it is reasonable for him to provide his services free of charge.

(5) Where a claimant is treated as possessing any income under any of paragraphs (1) to (3), the foregoing provisions of this Part shall apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(6) Where a claimant is treated as possessing any earnings under paragraph (4), the foregoing provisions of this Part shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess, except that regulation 22(3) (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account those earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259 of the Income and Corporation Taxes Act 1988 (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
- (b) an amount in respect of primary Class 1 contributions under the principal Act equivalent to an amount calculated by applying to those earnings the appropriate primary percentage applicable at the date of claim; and
- (c) one half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

### **Modifications in respect of children and young persons**

**30.**—(1) Any capital of a child or young person payable by instalments which are outstanding at the date of claim shall, if the aggregate of the instalments outstanding and the amount of that child's or young person's other capital calculated in accordance with Chapter VI of this Part in like manner as for the claimant, except where otherwise provided, would exceed £3,000, be treated as income.

(2) Where the income of a child or young person, other than income consisting of any payment of maintenance whether under a court order or not, calculated in accordance with the foregoing provisions of this Part exceeds the sum specified as an allowance for that child or young person in Schedule 5 and regulation 51(5) (determination of appropriate maximum disability working allowance) applies, that income shall not be treated as income of the claimant.

(3) Where the capital of a child or young person, if calculated in accordance with Chapter VI of this Part in like manner as for the claimant, except where otherwise provided, would exceed £3,000, any income of that child or young person shall not be treated as income of the claimant.

(4) Any income of a child or young person which is to be disregarded under Schedule 3 shall be disregarded in such manner as to produce the result most favourable to the claimant.

CHAPTER VI:

## CAPITAL

### Capital limit

**31.** For the purposes of Article 23(6) of the Order as it applies to disability working allowance, the prescribed amount is £16,000.

### Calculation of capital

**32.—**(1) For the purposes of Part III of the Order as it applies to disability working allowance, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 34 (income treated as capital).

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 4 (capital to be disregarded).

### Disregard of capital of child or young person

**33.** The capital of a child or young person who is a member of the claimant's family shall not be treated as capital of the claimant.

### Income treated as capital

**34.—**(1) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to—

- (a) income tax under Schedule D or E; or
- (b) income tax under the legislation of the Republic of Ireland which is analogous to income tax under Schedule D or E,

shall be treated as capital.

(2) Any holiday pay which is not earnings under regulation 21(1)(b) (earnings of employed earners) shall be treated as capital.

(3) Any charitable or voluntary payment which is not made or is not due to be made at regular intervals, other than a payment which is made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust or the Independent Living Fund shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 4, 6, 13 or 26 to 30 of Schedule 4, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer shall be treated as capital.

(6) Any maintenance payment other than one to which regulation 18(2) (normal weekly income other than earnings) applies shall be treated as capital.

### **Calculation of capital in the United Kingdom**

**35.** Capital which a claimant possesses in the United Kingdom shall be calculated—

- (a) except in a case to which paragraph (b) applies, at its current market or surrender value less—
  - (i) where there would be expenses attributable to sale, 10 per cent., and
  - (ii) the amount of any incumbrance secured on it;
- (b) in the case of an Ulster or National Savings Certificate—
  - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date of claim, at the price which it would have realised on that 1st July had it been purchased on the last day of that issue, or
  - (ii) in any other case, at its purchase price.

### **Calculation of capital outside the United Kingdom**

**36.** Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value; or
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

less, where there would be expenses attributable to sale, 10 per cent. and the amount of any incumbrance secured on it.

### **Notional capital**

**37.—(1)** A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to disability working allowance or increasing the amount of that benefit except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant; or
  - (b) to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 38 (diminishing notional capital rule).
- (2) Except in the case of—
- (a) a discretionary trust;
  - (b) a trust derived from a payment made in consequence of a personal injury; or
  - (c) any loan which would be obtainable only if secured against capital disregarded under Schedule 4,

any capital which would become available to the claimant upon application being made but which has not been acquired by him shall be treated as possessed by him.

(3) Any payment of capital, other than a payment of capital made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust or the Independent Living Fund, made—

- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall be treated as possessed by that single claimant or member of the family to the extent that it is used for his food, ordinary clothing or footwear, household fuel or housing costs; and in this sub-paragraph "ordinary clothing or footwear" means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities; or
- (b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant or member of the family to the extent that it is kept by him or used on behalf of any member of the family.

(4) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he shall be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 32 (calculation of capital), be disregarded; and
- (b) he shall, subject to paragraph (5), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(5) For so long as the claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (4) shall be disregarded.

(6) Where a claimant is treated as possessing capital under any of paragraphs (1) to (4), the foregoing provisions of this Chapter shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

(7) For the avoidance of doubt a claimant is to be treated as possessing capital under paragraph (1) only if the capital of which he has deprived himself is actual capital and not capital which he is treated as possessing under regulation 39 (capital jointly held).

### **Diminishing notional capital rule**

**38.**—(1) Where a claimant is treated as possessing capital under regulation 37(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a benefit week which is subsequent to—
  - (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied, or
  - (ii) a week which follows that relevant week and which satisfies those conditions, shall be reduced by an amount determined under paragraph (3); and
- (b) in the case of a benefit week in respect of which paragraph (1)(a) does not apply but where—
  - (i) that week is a week subsequent to the relevant week, and
  - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied, shall be reduced by the amount determined under paragraph (4).

(2) This paragraph applies to a benefit week where the claimant satisfies the conditions that—

- (a) he is entitled to disability working allowance; and

- (b) but for regulation 37(1), he would have been entitled to an additional amount of disability working allowance in that benefit week.
- (3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to the aggregate of—
- (a) the additional amount of disability working allowance to which the claimant would have been entitled; and
  - (b) if the claimant would, but for regulation 43(1) of the Housing Benefit (General) Regulations (Northern Ireland) 1987<sup>(47)</sup> (notional capital), have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week in which the date of the last claim for disability working allowance falls, the amount (if any) which is equal to—
    - (i) in a case where no housing benefit is payable, the amount to which he would have been entitled, or
    - (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled.
- (4) Subject to paragraph (5), for the purposes of paragraph (1)(b), the condition is that the claimant would have been entitled to disability working allowance in the relevant week but for regulation 37(1), and in such a case the amount of the reduction shall be equal to the aggregate of—
- (a) the amount of disability working allowance to which the claimant would have been entitled in the relevant week but for regulation 37(1); and
  - (b) if the claimant would, but for regulation 43(1) of the Housing Benefit (General) Regulations (Northern Ireland) 1987 (notional capital), have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week in which the first day of the relevant week falls, the amount (if any) which is equal to—
    - (i) in a case where no housing benefit is payable, the amount to which he would have been entitled, or
    - (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled.
- (5) The amount determined under paragraph (4) shall be re-determined under that paragraph if the claimant makes a further claim for disability working allowance and the conditions in paragraph (6) are satisfied, and in such a case—
- (a) paragraph (4)(a) and (b) shall apply as if for “relevant week” there were substituted “relevant subsequent week”; and
  - (b) subject to paragraph (7), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.
- (6) The conditions are that—
- (a) a further claim is made 20 or more weeks after—
    - (i) the first day of the relevant week, or
    - (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the first day of the relevant subsequent week which last occurred, whichever last occurred; and
  - (b) the claimant would have been entitled to disability working allowance but for regulation 37(1).

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<sup>(47)</sup> S.R. 1987 No. 461; relevant amending regulations are S.R. 1990 No. 345



(7) The amount as re-determined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.

(8) For the purposes of this regulation—

- (a) “benefit week” has the meaning prescribed in regulations 16 (date of entitlement under an award for the purpose of determining the day from which benefit is to be payable and effective date of change of rate) and 27 (family credit and disability working allowance) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(48) except where it appears in paragraphs (3)(b) and (4)(b) where it has the meaning prescribed in regulation 2(1) of the Housing Benefit (General) Regulations (Northern Ireland) 1987 (interpretation);
- (b) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 37(1)—
  - (i) was for the first time taken into account for the purpose of determining his entitlement to disability working allowance, or
  - (ii) was taken into account on a subsequent occasion for that purpose other than in respect of either a benefit week to which paragraph (2) applies or a further claim to which paragraph (5) applies, and, where more than one benefit week is identified by reference to heads (i) and (ii), the later or latest such benefit week; and
- (c) “relevant subsequent week” means the benefit week in which any award of disability working allowance in respect of the further claim referred to in paragraph (6)(a) would, but for regulation 37(1), have commenced, but it shall not be earlier than the twenty-seventh week after the week in which the existing amount took effect.

### **Capital jointly held**

**39.**—(1) Subject to paragraph (2), except where a claimant possesses capital which is disregarded under regulation 37(4) (notional capital), where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Chapter shall apply for the purpose of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

(2) Any premises or land not wholly owned by the claimant shall be disregarded for such period as is reasonable in the circumstances in order to determine the exact nature and value of the claimant’s interest.

### **Calculation of tariff income from capital**

**40.**—(1) Where the claimant’s capital calculated in accordance with this Chapter exceeds £3,000, it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £3,000 but not exceeding £16,000.

(2) Notwithstanding paragraph (1), where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 34 (income treated as capital).

CHAPTER VII:

## STUDENTS

### Interpretation

#### 41. In this Chapter—

“a course of advanced education” means—

- (a) a full-time course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education, a higher national diploma, a higher national diploma of the Business & Technician Education Council or the Scottish Vocational Education Council or a teaching qualification; or
- (b) any other full-time course which is a course of a standard above ordinary national diploma, a national diploma of the Business & Technician Education Council or a national certificate of the Scottish Vocational Education Council, a general certificate of education (advanced level), a Scottish certificate of education (higher level) or a Scottish certificate of sixth year studies;

“contribution” means any contribution in respect of the income of any other person which a Minister of the Crown or an education authority takes into account in assessing the amount of the student’s grant and by which that amount is, as a consequence, reduced;

“course of study” means any full-time course of study or sandwich course whether or not a grant is made for attending it;

“covenant income” means the gross income payable to a student under a Deed of Covenant by a person whose income is, or is likely to be, taken into account in assessing the student’s grant or award;

“education authority” means a government department, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986<sup>(49)</sup> (education and library boards), a local education authority as defined in section 114(1) of the Education Act 1944<sup>(50)</sup> (interpretation), an education authority as defined in section 135(1) of the Education (Scotland) Act 1980<sup>(51)</sup> (interpretation), any body which is a research council for the purposes of the Science and Technology Act 1965<sup>(52)</sup> or any analogous government department, authority, board or body of the Channel Islands, Isle of Man or any other country outside the United Kingdom;

“grant” means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment derived from funds made available by the Department of Education for Northern Ireland for the purpose of assisting students in financial difficulties under Article 50 (provision of awards by boards) or 51 (provision of awards by Department) of the Education and Libraries (Northern Ireland) Order 1986;

“grant income” means—

- (a) any income by way of a grant; and
- (b) any contribution which has been assessed whether or not it has been paid,

and any such contribution which is paid by way of a covenant shall be treated as part of the student’s grant income;

“last day of the course” means the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

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<sup>(49)</sup> S.I. 1986/594 (N.I. 3)

<sup>(50)</sup> 1944 c. 31; as amended by Article 3(22) of, and Schedule 1 to, S.I. 1974/595 and by Article 4(1) of S.I. 1977/293

<sup>(51)</sup> 1980 c. 44

<sup>(52)</sup> 1965 c. 4

“period of study” means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course and ending with the last day of the course;
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, other than the final year of the course, the period beginning with the start of the course or, as the case may be, that year’s start and ending with either—
  - (i) the day before the start of the next year of the course in a case where the student’s grant is assessed at a rate appropriate to his studying throughout the year, or, if he does not have a grant, where it would have been assessed at such a rate had he had one, or
  - (ii) in any other case the day before the start of the normal summer vacation appropriate to his course; or
- (c) in the final year of a course of study of more than one year, the period beginning with that year’s start and ending with the last day of the course;

“periods of experience” has the meaning prescribed in regulation 3(1) of the Students Awards Regulations (Northern Ireland) 1991<sup>(53)</sup>;

“sandwich course” has the meaning prescribed in regulation 3(1) of the Students Awards Regulations (Northern Ireland) 1991;

“standard maintenance grant” means—

- (a) except where paragraph (b) applies, in the case of a student attending a course of study at the University of London or at an institution within the area comprising the City of London and the metropolitan police district, the amount specified for the time being in paragraph 2(2)(a) of Schedule 7 to the Students Awards Regulations (Northern Ireland) 1991 for such a student;
- (b) in the case of a student residing at his parents' home, the amount specified in paragraph 3(2) thereof; and
- (c) in any other case, the amount specified in paragraph 2(2) other than in sub-paragraph (a) or (b) thereof;

“student” means a person aged less than 19 who is attending a full-time course of advanced education or, as the case may be, a person aged 19 or over who is attending a full-time course of study at an educational establishment; and for the purposes of this definition—

- (a) a person who has started on such a course shall be treated as attending it throughout any period of term or vacation within it, until the last day of the course or such earlier date as he abandons it or is dismissed from it; and
- (b) a person on a sandwich course shall be treated as attending a full-time course of advanced education or, as the case may be, of study;

“year” in relation to a course, means the period of 12 months beginning on 1st January, 1st April or 1st September according to whether the academic year of the course in question begins in the spring, the summer or the autumn respectively.

### **Calculation of grant income**

**42.**—(1) The amount of a student’s grant income to be taken into account shall, subject to paragraph (2), be the whole of his grant income.

(2) There shall be disregarded from a student’s grant income any payment—

- (a) intended to meet tuition fees or examination fees;
  - (b) intended to meet additional expenditure incurred by a disabled student in respect of his attendance on a course;
  - (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
  - (d) on account of the student maintaining a home at a place other than that at which he resides during his course;
  - (e) intended to meet the cost of books and equipment or, if not so intended, an amount equal to £257; or
  - (f) intended to meet travel expenses incurred as a result of his attendance on the course.
- (3) A student's grant income, except any amount intended for the maintenance of dependants under Part III of Schedule 7 to the Students Awards Regulations (Northern Ireland) 1991 or intended for an older student under Part IV of that Schedule, shall be apportioned—
- (a) subject to paragraph (5), in a case where it is attributable to the period of study, equally between the weeks in that period; and
  - (b) in any other case, equally between the weeks in the period in respect of which it is payable.
- (4) Any amount intended for the maintenance of dependants or for an older student under the provisions referred to in paragraph (3) shall be apportioned equally over a period of 52 weeks commencing with the week in which the period of study begins.
- (5) In the case of a student on a sandwich course, any periods of experience within the period of study shall be excluded and the student's grant income shall be apportioned equally between the remaining weeks in that period.

#### **Calculation of covenant income where a contribution is assessed**

**43.**—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of his covenant income to be taken into account shall be the whole amount of his covenant income less, subject to paragraph (3), the amount of the contribution.

- (2) The weekly amount of the student's covenant income shall be determined—
  - (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52; and
  - (b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution shall be treated as increased by the amount, if any, by which the amount excluded under regulation 42(2)(f) (calculation of grant income) falls short of the amount included in the standard maintenance grant to meet travel expenses.

#### **Calculation of covenant income where no grant income or no contribution is assessed**

**44.**—(1) Where a student is not in receipt of income by way of a grant the amount of his covenant income shall be calculated as follows—

- (a) any sums intended for any expenditure specified in regulation 42(2)(a) to (d) (calculation of grant income), necessary as a result of his attendance on the course, shall be disregarded;
- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded shall be apportioned equally between the weeks of the period of study and there shall be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under regulation 42(2)(e) and (f) had the student been in receipt of the standard maintenance grant; and

- (c) the balance, if any, shall be divided by 52 and treated as weekly income of which £5 shall be disregarded.
- (2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenant income shall be calculated in accordance with paragraph (1) (a) to (c), except that—
  - (a) the value of the standard maintenance grant shall be abated by the amount of his grant income less an amount equal to the amount of any sums disregarded under regulation 42(2) (a) to (d); and
  - (b) the amount to be disregarded under paragraph (1)(b) shall be abated by an amount equal to the amount of any sums disregarded under regulation 42(2)(e) and (f).

### **Relationship with amounts to be disregarded under Schedule 3**

**45.** No part of a student's covenant income or grant income shall be disregarded under paragraph 12 of Schedule 3 and any other income to which sub-paragraph (1) of that paragraph applies shall be disregarded thereunder only to the extent that the amount disregarded under regulation 43(2) (b) (calculation of covenant income where a contribution is assessed) or, as the case may be, regulation 44(1)(c) (calculation of covenant income where no grant income or no contribution is assessed) is less than £10.

### **Other amounts to be disregarded**

**46.** For the purposes of ascertaining income other than grant income and covenant income, any amounts intended for any expenditure specified in regulation 42(2) (calculation of grant income) necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulations 42(2), 43(3) and 44(1)(a) or (b) (calculation of grant income and covenant income) on like expenditure.

### **Treatment of student loans**

**47.—(1)** A loan which is made to a student pursuant to arrangements made under Article 3 of the Education (Student Loans) (Northern Ireland) Order 1990(**54**) or section 1 of the Education (Student Loans) Act 1990(**55**) shall be treated as income.

- (2) In calculating the weekly amount of the loan to be taken into account as income—
  - (a) except where sub-paragraph (b) applies, the loan shall be apportioned equally between the weeks in the academic year in respect of which the loan is payable;
  - (b) in the case of a loan which is payable in respect of the final academic year of the course or, if the course is only of one academic year's duration, in respect of that year, the loan shall be apportioned equally between the weeks in the period beginning with the start of the final academic year or, as the case may be, the single academic year and ending with the last day of the course,

and from the weekly amount so apportioned there shall be disregarded £10.

(3) Any loan for which a student is eligible in respect of an academic year under the arrangements mentioned in paragraph (1) but which has not been acquired by him shall be treated as possessed by him and paragraphs (1) and (2) shall apply accordingly; and for the purposes of this paragraph the loan for which a student is eligible is the maximum amount payable to him under those arrangements.

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(54) S.I. 1990/1506 (N.I. 11)

(55) 1990 c. 6

### **Disregard of contribution**

**48.** Where the claimant or his partner is a student and the income of one has been taken into account for the purpose of assessing a contribution to the student's grant, an amount equal to the amount of the contribution shall be disregarded for the purpose of calculating the income of the one liable to make that contribution.

### **Disregard of tax refund**

**49.** Any amount by way of a refund of tax deducted from a student's covenant income shall be disregarded in calculating the student's income or capital.

### **Disregard of changes occurring during summer vacation**

**50.** In calculating a student's income there shall be disregarded any change in the standard maintenance grant occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of his period of study, from the date on which the change occurred to the end of that vacation.

## **PART VI**

### **CALCULATION OF ENTITLEMENT**

#### **Determination of appropriate maximum disability working allowance**

**51.—**(1) Subject to paragraphs (2) to (7), the appropriate maximum disability working allowance shall be the aggregate of the following allowances—

- (a) in respect of a single claimant, the allowance specified in Schedule 5, column (2), paragraph 1;
- (b) in respect of a claimant who is—
  - (i) a member of a married or unmarried couple, or
  - (ii) a lone parent who is treated as responsible for a child or young person by virtue of regulation 9 (circumstances in which a person is treated as responsible or not responsible for another),

the allowance specified in Schedule 5, column (2), paragraph 2;

- (c) in respect of any child or young person for whom the claimant or his partner is treated as responsible by virtue of regulation 9, the allowance specified in Schedule 5, column (2) against whichever description in either paragraph 3 or 4 of column (1) fits the child or young person concerned.

(2) Where a claimant or, as the case may be, the partner of a claimant is married polygamously to two or more members of the same household, the maximum amount shall include, in respect of every such member but the first, an additional allowance which equals—

- (a) in the case of a person aged less than 18 years, the allowance specified in Schedule 5, column (2), paragraph 4(a); or
- (b) in any other case, the allowance specified in Schedule 5, column (2), paragraph 4(b).

(3) For the purposes of paragraph (2), a person shall not be treated as a member of the same household as someone to whom he is married polygamously if he would not be so treated in the case of monogamous marriage.

(4) Where the capital of a child or young person, if calculated in accordance with Part V (income and capital) in like manner as for the claimant, except where otherwise provided, would exceed £3,000, the allowance in respect of that child or young person shall be nil.

(5) Where the weekly income of a child or young person, other than income consisting of any payment of maintenance whether under a court order or not, calculated in accordance with Part V, exceeds the amount specified for that child or young person in Schedule 5, the allowance in respect of that child or young person shall be nil.

(6) Where a child or young person is, for the purposes of regulation 10(2)(a) (membership of the same household), a patient or in residential accommodation on account of physical or mental handicap or physical or mental illness and has been so accommodated for the 52 weeks immediately before the date of claim, the allowance in respect of that child or young person shall be nil.

(7) For the purposes of this regulation the amount of any disability working allowance and the age of any child or young person shall be determined by reference to the allowance specified in Schedule 5 and the age of the child or young person at the date on which the period under Article 21(6F) of the Order(56) begins.

### **Applicable amount**

**52.**—(1) The applicable amount for the purposes of Article 21(6A)(c) of the Order(56) shall, in the case of a claimant who is—

- (a) single, be £39.95 per week; and
- (b) a member of a married or unmarried couple, or a lone parent, be £66.60 per week.

(2) For the purposes of Article 21(6D) of the Order(56) the prescribed date is the date on which the period under Article 21(6F) of the Order begins.

### **Entitlement to disability working allowance where income exceeds the applicable amount**

**53.** The prescribed percentage for the purpose of Article 22(3B) of the Order(57) (amount, etc.) shall be 70 per cent.

## **PART VII**

### **CHANGES OF CIRCUMSTANCES**

#### **Death of claimant**

**54.**—(1) Except as provided in paragraph (2), an award of disability working allowance shall cease to have effect upon the death of the claimant.

(2) Where a claimant dies and is survived by a partner who was the claimant's partner at the date of claim, an award of disability working allowance made in the claimant's favour shall have effect for its unexpired period as if originally made in favour of the partner.

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(56) Paragraphs (6A), (6D) and (6F) were inserted by Article 8(4) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S.I. 1991/1712 (N.I. 17))

(56) Paragraphs (6A), (6D) and (6F) were inserted by Article 8(4) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S.I. 1991/1712 (N.I. 17))

(56) Paragraphs (6A), (6D) and (6F) were inserted by Article 8(4) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S.I. 1991/1712 (N.I. 17))

(57) Paragraph (3B) was inserted by Article 8(8) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

### **Prevention of duplication of awards of disability working allowance, family credit and income support**

55. Where provision is made for the same child or young person in awards for overlapping periods, the first being an award of disability working allowance and the second an award of disability working allowance, family credit or income support, and at the start of the period of overlap that child or young person is no longer a member of the household of the claimant under the first award, the first award shall terminate with effect from the start of the period of overlap.

### **Overlapping awards of disability working allowance**

56. An award of disability working allowance which is made on review or appeal shall be treated as a relevant change of circumstances affecting any other award of disability working allowance which it overlaps.

## **PART VIII**

### **ENTITLEMENT TO DISABILITY WORKING ALLOWANCE AND FAMILY CREDIT**

#### **Prescribed circumstances for entitlement to disability working allowance**

57. For the purposes of Article 21(6A)(d) of the Order where a claimant or a member of his family is entitled to family credit, he is entitled to disability working allowance, if—

- (a) at the date of the claim for disability working allowance the award of family credit for him or a member of his family will expire within 28 days;
- (b) the claimant is or would be otherwise entitled to disability working allowance by virtue of these regulations; and
- (c) the claim for disability working allowance is made in respect of a period which commences immediately after the expiry of the award of family credit.

## **PART IX**

### **AMENDMENT OF THE FAMILY CREDIT (GENERAL) REGULATIONS (NORTHERN IRELAND) 1987**

#### **Amendment of the Family Credit (General) Regulations (Northern Ireland) 1987**

58.—(1) The Family Credit (General) Regulations (Northern Ireland) 1987(58) shall be amended in accordance with paragraph (2).

(2) After Part VI of the Family Credit (General) Regulations (Northern Ireland) 1987 (changes of circumstances) there shall be added the following Part—



“PART VII  
ENTITLEMENT TO FAMILY CREDIT AND  
DISABILITY WORKING ALLOWANCE

**Prescribed circumstances for entitlement to family credit**

**52.** For the purposes of Article 21(5)(bb) of the Order<sup>(59)</sup> where a claimant or a member of his family is entitled to disability working allowance, he is entitled to family credit, if—

- (a) at the date of the claim for family credit the award of disability working allowance for him or a member of his family will expire within 42 days;
- (b) the claimant is or would be otherwise entitled to family credit by virtue of these regulations; and
- (c) the claim for family credit is made in respect of a period which commences immediately after the expiry of the award of disability working allowance.”.

Sealed with the Official Seal of the Department of Health and Social Services on

L.S.

2nd March 1992.

*A. N. Burns*  
Assistant Secretary

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<sup>(59)</sup> Sub-paragraph (bb) was inserted by Article 10(1) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

## SCHEDULE 1

Regulation 3

Disability which puts a person at a disadvantage in getting a job

### PART I

1. When standing he cannot keep his balance unless he continually holds onto something.
2. Using any crutches, walking frame, walking stick, prosthesis or similar walking aid which he habitually uses, he cannot walk a continuous distance of 100 metres along level ground without stopping or without suffering severe pain.
3. He can use neither of his hands behind his back as in the process of putting on a jacket or of tucking a shirt into trousers.
4. He can extend neither of his arms in front of him so as to shake hands with another person without difficulty.
5. He can put neither of his hands up to his head without difficulty so as to put on a hat.
6. Due to lack of manual dexterity he cannot pick up with each hand a coin which is not more than 2½ centimetres in diameter.
7. He is not able to use his hands or arms to pick up a full jug of 1 litre capacity and pour from it into a cup without difficulty.
8. He can turn neither of his hands sideways through 180 degrees.
9. He is registered as blind or partially sighted in pursuance of arrangements made under section 1(1) of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978(60).
10. He cannot see to read 16 point print at a distance greater than 20 centimetres, if appropriate, wearing the glasses he normally uses.
11. He cannot hear a telephone ring when he is in the same room as the telephone, if appropriate, using a hearing aid he normally uses.
12. In a quiet room he has difficulty hearing what someone talking in a loud voice at a distance of 2 metres says, if appropriate, using a hearing aid he normally uses.
13. People who know him well have difficulty in understanding what he says.
14. When a person he knows well speaks to him he has difficulty in understanding what that person says.
15. At least once a year during waking hours he is in a coma or has a fit in which he loses consciousness.
16. He has a mental illness for which he receives regular treatment under the supervision of a medically qualified person.
17. Due to mental disability he is often confused or forgetful.
18. He cannot do the simplest addition and subtraction.
19. Due to mental disability he strikes people or damages property or is unable to form normal social relationships.

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(60) 1978 c. 53

20. He cannot normally sustain an 8 hour working day or a 5 day working week due to a medical condition or intermittent or continuous severe pain.

## PART II

21. Subject to paragraph 24, there is payable to him—

- (a) the highest or middle rate of the care component of disability living allowance;
- (b) the higher rate of the mobility component of disability living allowance;
- (c) an attendance allowance under section 35 of the principal Act<sup>(61)</sup>;
- (d) disablement benefit where the extent of the disablement is assessed at not less than 80 per cent. in accordance with section 57 of, and Schedule 8 to, the principal Act<sup>(62)</sup>;
- (e) a war pension in respect of which the degree of disablement is certified at not less than 80 per cent.; and for the purposes of this sub-paragraph “war pension” means a war pension in accordance with section 25(4) of the Social Security Act 1989<sup>(63)</sup>;
- (f) mobility supplement; or
- (g) a benefit corresponding to a benefit mentioned in sub-paragraphs (a) to (f) under any enactment having effect in Great Britain.

22. Subject to paragraph 24, for one or more of the 56 days immediately preceding the date when the initial claim for disability working allowance was made or treated as made, there was payable to him severe disablement allowance or a corresponding benefit under any enactment having effect in Great Britain.

23. Subject to paragraph 24, he has an invalid carriage or other vehicle provided under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(64)</sup> or provided by the Secretary of State under section 5(2)(a) of, and Schedule 2 to, the National Health Service Act 1977<sup>(65)</sup> or under section 46 of the National Health Service (Scotland) Act 1978<sup>(66)</sup>.

24. Paragraphs 21 to 23 are subject to the condition that no evidence is before the adjudication officer which gives him reasonable grounds for believing that in respect of an initial claim, none of the paragraphs in Part I or III of this Schedule apply to the claimant and in respect of a repeat claim, none of the paragraphs in Part I apply to the claimant.

## PART III

25. As a result of an illness or accident he is undergoing a period of habilitation or rehabilitation.

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<sup>(61)</sup> 1975 c. 15; section 35 was amended by Article 3 of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)), paragraph 8 of Schedule 1 to the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)), Article 3 of the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2)), paragraph 5 of Schedule 8 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)), Article 3(1) and (2) of the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15)) and Article 4(1) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

<sup>(62)</sup> Section 57 was amended by Article 32(2) of the Social Security (Northern Ireland) Order 1982 (S.I. 1982/1084 (N.I. 16)), paragraph 3 of Schedule 3 to the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)) and paragraph 11 of Schedule 7 to the Social Security (Northern Ireland) Order 1989

<sup>(63)</sup> 1989 c. 24

<sup>(64)</sup> S.I. 1972/1265 (N.I. 14)

<sup>(65)</sup> 1977 c. 49

<sup>(66)</sup> 1978 c. 29

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## SCHEDULE 2

Regulations 22(2) and 25(2)

### Sums to be disregarded in the calculation of earnings

1. Any earnings derived from employment which are payable in a country outside the United Kingdom where there is a prohibition against the transfer to the United Kingdom of those earnings.
2. Any earnings of a child or young person.
3. Where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment to sterling.

## SCHEDULE 3

Regulation 27(2)

### Sums to be disregarded in the calculation of income other than earnings

1. Any amount paid by way of tax on income which is taken into account under regulation 27 (calculation of income other than earnings).
2. Any payment in respect of any expenses incurred by a claimant who is—
  - (a) engaged by a charitable or voluntary body; or
  - (b) a volunteer,if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 29(4) (notional income).
3. Any housing benefit or income support.
4. Any mobility allowance or disability living allowance.
5. Any concessionary payment made to compensate for the non-payment of—
  - (a) any payment specified in paragraph 4 or 7; or
  - (b) income support.
6. Any mobility supplement or any payment intended to compensate for the non-payment of such a supplement.
7. Any attendance allowance.
8. Any payment to the claimant as holder of the Victoria Cross or of the George Cross or any analogous payment.
9. Any sum in respect of a course of study attended by a child or young person payable by virtue of regulations made under Article 50, 51 or 55(1) of the Education and Libraries (Northern Ireland) Order 1986<sup>(67)</sup> (provisions to assist persons to take advantage of educational facilities).
10. In the case of a student, any sums intended for any expenditure specified in regulation 42(2) (calculation of grant income) necessary as a result of his attendance on his course.
11. In the case of a claimant participating in provision or arrangements for training under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945<sup>(68)</sup> or section 1(1) of the

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<sup>(67)</sup> S.I. 1986/594 (N.I. 3)

<sup>(68)</sup> 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986

Employment and Training Act (Northern Ireland) 1950<sup>(69)</sup>, or attending a course at an employment rehabilitation unit established under any of those sections—

- (a) any travelling expenses reimbursed to the claimant;
- (b) any lodging allowance under section 4 of the Disabled Persons (Employment) Act (Northern Ireland) 1945 or section 3(3) of the Employment and Training Act (Northern Ireland) 1950; or
- (c) any training premium under the Employment and Training Act (Northern Ireland) 1950,

but this paragraph, except in so far as it relates to a payment under sub-paragraph (a), (b) or (c), does not apply to any part of any allowance under section 4 of the Disabled Persons (Employment) Act (Northern Ireland) 1945 or section 3(3) of the Employment and Training Act (Northern Ireland) 1950.

12.—(1) Except where sub-paragraph (2) applies and subject to sub-paragraph (3) and paragraphs 29 and 34, £10 of any charitable payment or of any voluntary payment made or due to be made at regular intervals.

(2) Subject to sub-paragraph (3) and paragraph 34, any charitable payment or voluntary payment made or due to be made at regular intervals which is intended and used for an item other than food, ordinary clothing or footwear, household fuel or housing costs of any member of the family.

(3) Sub-paragraphs (1) and (2) shall not apply to a maintenance payment which is made or due to be made by—

- (a) a former partner of the claimant, or former partner of any member of the claimant's family; or
- (b) the parent of a child or young person where that child or young person is a member of the claimant's family.

(4) For the purposes of sub-paragraph (1), where a number of charitable or voluntary payments fall to be taken into account in any week they shall be aggregated and treated as though they were one such payment.

(5) For the purposes of sub-paragraph (2), “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.

13.—(1) Where the claimant or his partner is treated as responsible for a child or young person by virtue of regulation 9 (circumstances in which a person is to be treated as responsible or not responsible for another), £15 of any payment of maintenance, whether under a court order or not, which is made or due to be made by—

- (a) the claimant's former partner, or the claimant's partner's former partner; or
- (b) the parent of a child or young person where that child or young person is a member of the claimant's family except where that parent is the claimant or the claimant's partner.

(2) For the purposes of sub-paragraph (1), where more than one maintenance payment falls to be taken into account in any week, all such payments shall be aggregated and treated as if they were a single payment.

14. Subject to paragraph 29, £10 of any of the following—

- (a) a war disablement pension or war widow's pension or a payment made to compensate for the non-payment of such a pension;

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<sup>(69)</sup> 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and by Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

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- (b) a pension paid by the government of a country outside the United Kingdom which is either—
  - (i) analogous to a war disablement pension, or
  - (ii) analogous to a war widow's pension; or
- (c) a pension paid under any special provision made by the law of the Federal Republic of Germany or any part of it, or of the Republic of Austria, to victims of National Socialist persecution.

15. Any child benefit under Part II of the Child Benefit (Northern Ireland) Order 1975<sup>(70)</sup>.

16.—(1) Any income derived from capital to which the claimant is, or is treated under regulation 39 (capital jointly held) as, beneficially entitled but, subject to sub-paragraphs (2) and (3), not income derived from capital disregarded under paragraph 1, 2, 4, 6, 13 or 26 to 30 of Schedule 4.

(2) Income derived from capital disregarded under paragraph 2, 4 or 26 to 30 of Schedule 4 but, subject to sub-paragraph (3), only to the extent of any mortgage repayments and payments of rates made in respect of the premises or land in the period during which that income accrued.

(3) Where income is derived from conacre or agistment letting any expenses reasonably incurred therein including the repayment of interest and capital on any loan used for the purchase of land under the Northern Ireland Land Act 1925<sup>(71)</sup>.

17. Where a person receives income under an annuity purchased with a loan which satisfies the following conditions—

- (a) that the loan was made as part of a scheme under which not less than 90 per cent. of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in this paragraph referred to as “the annuitants”) who include the person to whom the loan was made;
- (b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;
- (c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;
- (d) that the loan was secured on a dwelling in Northern Ireland and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling; and
- (e) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid,

the amount, calculated on a weekly basis equal to—

- (i) where, or insofar as, section 26 of the Finance Act 1982<sup>(72)</sup> (deduction of tax from certain loan interest) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the basic rate for the year of assessment in which the payment of interest becomes due, and
- (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

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<sup>(70)</sup> S.I. 1975/1504 (N.I. 16)

<sup>(71)</sup> 1925 c. 34

<sup>(72)</sup> 1982 c. 39

18. Any payment made to the claimant by a person who normally resides with the claimant as a contribution towards his living and accommodation costs except a payment to which paragraph 19 or 39 or regulation 24(2) (earnings of self-employed earners) applies.

19. Where the claimant occupies a dwelling as his home which is also occupied by a person other than one to whom paragraph 18 refers or one who is provided with board and lodging accommodation and that person is contractually liable to make payments in respect of his occupation of the dwelling to the claimant—

- (a) £4 of any payment made by that person; and
- (b) a further £8.60, where that payment is inclusive of an amount for heating.

20. Any income in kind.

21. Any income which is payable in a country outside the United Kingdom where there is a prohibition against the transfer to the United Kingdom of that income.

22.—(1) Any payment made to the claimant in respect of a child or young person who is a member of his family—

- (a) in accordance with a scheme approved by the Department under Article 59(4) of the Adoption (Northern Ireland) Order 1987(73) (schemes for payments of allowances to adopters);
- (b) in accordance with a scheme approved by the Secretary of State under section 57A of the Adoption Act 1976(74) (permitted allowances) or, as the case may be, section 51(5) of the Adoption (Scotland) Act 1978(75) (schemes for payments of allowances to adopters); or
- (c) which is a payment made by a local authority in pursuance of paragraph 15(1) of Schedule 1 to the Children Act 1989(76) (local authority contribution to child's maintenance),

to the extent specified in sub-paragraph (2).

(2) In the case of a child or young person—

- (a) to whom regulation 30 applies (modifications in respect of children and young persons), the whole payment; or
- (b) to whom that regulation does not apply, so much of the weekly amount of the payment as exceeds the allowance in respect of that child or young person under Schedule 5.

23. Any payment made by a Health and Social Services Board or training school within the meaning of section 137 of the Children and Young Persons Act (Northern Ireland) 1968(77) (approval of schools) to the claimant with whom a person is boarded out by virtue of arrangements made under section 114(1)(a) of that Act or by a voluntary organisation under section 129(1) of that Act.

24. Any payment made by a Health and Social Services Board, training school or voluntary organisation to the claimant in respect of a person who is not normally a member of the claimant's household but is temporarily in his care.

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(73) [S.I. 1987/2203 \(N.I. 22\)](#)

(74) [1976 c. 36](#); section 57A was inserted by paragraph 25 of Schedule 10 to the Children Act [1989 \(c. 41\)](#)

(75) [1978 c. 28](#)

(76) [1989 c. 41](#)

(77) [1968 c. 34 \(N.I.\)](#); section 137 was amended by Schedule 18 to the Health and Personal Social Services (Northern Ireland) Order 1972 ([S.I. 1972/1265 \(N.I. 14\)](#))

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25. Any payment made by a Health and Social Services Board under section 122, 123 or 164 of the Children and Young Persons Act (Northern Ireland) 1968<sup>(78)</sup> (Health and Social Services Boards' duty to promote the welfare of children or powers to grant financial assistance to persons in, or formally in, their care).

26. Any payment of income which under regulation 34 (income treated as capital) is to be treated as capital.

27. Any statutory maternity pay under Part VI of the Order or maternity allowance under section 22 of the principal Act.

28. Any payment under paragraph 2 of Schedule 6 to the Order.

29. The total of a claimant's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 12(2) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 43(2)(b) (calculation of covenant income where a contribution is assessed), regulation 44(1)(c) (calculation of covenant income where no grant income or no contribution is assessed), regulation 47(2) (treatment of student loans) and paragraphs 12(1) and 14, shall in no case exceed £10 per week.

30. Any payment made under the legislation of, or under any scheme operating in, the Republic of Ireland which is analogous to any income to which this Schedule relates.

31. Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

32. Any statutory maternity pay under Part V of the Social Security Act 1986<sup>(79)</sup> or maternity allowance under section 22 of the Social Security Act 1975<sup>(80)</sup>.

33. Any payment in respect of expenses to which regulation 21(2) (earnings of employed earners) applies.

34.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust ("the Trusts"), or the Independent Living Fund.

(2) Any payment by or on behalf of a person who suffered or is suffering from haemophilia, or by or on behalf of his partner or former partner from whom he is not or, where either that person or his former partner has died, was not estranged or divorced, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person or that person's partner or former partner to whom this sub-paragraph refers;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by a person who is suffering from haemophilia, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—

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<sup>(78)</sup> Sections 122 and 164 were amended by Schedule 18 to the Health and Personal Social Services (Northern Ireland) Order 1972; by virtue of Article 17(1)(c) of that Order the functions under sections 122, 123 and 164 are exercised by Health and Social Services Boards

<sup>(79)</sup> 1986 c. 50

<sup>(80)</sup> 1975 c. 14



- (i) to that person's parent or step-parent, or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,
- but only for a period from the date of the payment until the end of 2 years from that person's death.
- (4) Any payment out of the estate of a person who suffered from haemophilia, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—
- (a) that person at the date of his death ("the relevant date") had no partner or former partner from whom he was not estranged or divorced, nor any child or young person who was or had been a member of his family; and
  - (b) the payment is made either—
    - (i) to that person's parent or step-parent, or
    - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,
- but only for a period of 2 years from the relevant date.
- (5) In the case of a person to whom or for whose benefit a payment under sub-paragraph (1), (2), (3) or (4) is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.
35. Any payment made under arrangements made by the Department to compensate for the loss (in whole or in part) of entitlement to housing benefit.
36. Any payment made by the Department to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April 1988 but who did not become entitled to income support in respect of a period beginning with and including that day.
37. Any payment made under arrangements made by the Department to compensate for the loss of housing benefit supplement under regulation 19A of the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983<sup>(81)</sup>.
38. Any payment made to a juror or witness in respect of attendance at court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.
39. Where the claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation—
- (a) £20.00 of any payment for that accommodation made by the person to whom it is provided; and
  - (b) where any such payment exceeds £20.00, 50 per cent. of the excess.
40. Any community charge benefit.
41. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988<sup>(82)</sup> or section 9A of the Abolition of Domestic Rates Etc. (Scotland) Act 1987<sup>(83)</sup> (reduced liability for personal community charge).
42. Any special war widow's payment made under—

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<sup>(81)</sup> S.R. 1983 No. 61; relevant amending regulations are S.R. 1983 No. 291, S.R. 1984 No. 79 and S.R. 1986 No. 236

<sup>(82)</sup> 1988 c. 41; section 13A was inserted by paragraph 5 of Schedule 5 to the Local Government and Housing Act 1989 (c. 42)

<sup>(83)</sup> 1987 c. 47; section 9A was inserted by section 143 of the Local Government and Housing Act 1989

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- (a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865**(84)**;
- (b) the Royal Warrant dated 19th February 1990 amending the Schedule to the Army Pensions Warrant 1977**(85)**;
- (c) the Queen's Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917**(86)**;
- (d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980**(87)**; or
- (e) the Orders dated 19th February 1990 amending Orders made on 12th December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980**(88)**,

and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under the provisions mentioned in sub-paragraphs (a) to (e).

43.—(1) Any payment or repayment made under regulation 3 (entitlement to full remission and payment), regulation 5 (persons entitled to remission in part or payment in part) or regulation 8 (repayment) of the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 1989**(89)**.

(2) Any payment or repayment made by the Department which is analogous to a payment or repayment mentioned in sub-paragraph (1).

44. Any payment made under regulation 8 (failure to receive milk tokens), regulation 9 (inability to purchase dried milk at a reduced price), regulation 10 (inability to obtain free vitamins) or regulation 12 (absence of beneficiary for less than a week) of the Welfare Foods Regulations (Northern Ireland) 1988**(90)**.

45. Any payment made under a scheme established by the Northern Ireland Office to assist relatives and other persons to visit persons in custody.

46. Any payment made by the Department of Economic Development under the Disabled Persons (Employment) Act (Northern Ireland) 1945 or in accordance with provision or arrangements under section 1 of the Employment and Training Act (Northern Ireland) 1950 to assist disabled persons to obtain or retain employment despite their disability.

47. Any family credit.

#### SCHEDULE 4

Regulation 32(2)

#### Capital to be disregarded

1. The dwelling including any garage, garden and outbuildings normally occupied by the claimant as his home, together with any agricultural land adjoining that dwelling and any land not adjoining that dwelling which it is impracticable or unreasonable to sell separately but,

**(84)** 1865 c. 73. Copies of the order are available from Ministry of Defence, NPC2, Room 317, Archway Block South, Old Admiralty Building, Spring Gardens, London, SW1A 2BE

**(85)** Army Code No. 13045 published by HMSO

**(86)** 1917 c. 51. Queen's Regulations for the Royal Air Force are available from HMSO

**(87)** 1980 c. 9. Copies of the regulations are available from Ministry of Defence, NPC2, Room 317, Archway Block South, Old Admiralty Buildings, Spring Gardens, London, SW1A 2BE

**(88)** Army Code No. 60589 published by HMSO

**(89)** S.R. 1989 No. 348; relevant amending regulations are S.R. 1990 No. 313 and S.R. 1991 No. 224

**(90)** S.R. 1988 No. 137; relevant amending regulations are S.R. 1991 No. 81

notwithstanding regulation 12 (calculation of income and capital of members of claimant's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

2. Any premises or land acquired for occupation by the claimant as his home which he intends to occupy within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises or land.

3. Any sum directly attributable to the proceeds of sale of any premises which formerly comprised the dwelling occupied as the home and which is to be used for the purchase of other premises or land intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase.

4. Any premises occupied in whole or in part as the home by a partner or relative (that is to say any close relative, grandparent, grandchild, uncle, aunt, nephew or niece) of any member of the family, where that person is aged 60 or over or has been incapacitated for a continuous period of at least 13 weeks immediately preceding the date of the claim.

5. Any reversionary interest.

6.—(1) The assets of any business owned in whole or in part by the claimant and for the purposes of which he is engaged as a self-employed earner or, if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

(2) The assets of any business owned in whole or in part by the claimant where—

- (a) he has ceased to be engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; and
- (b) he intends to become re-engaged as a self-employed earner in that business as soon as he recovers or is able to be re-engaged in that business,

for a period of 26 weeks from the date on which the claimant last ceased to be engaged in that business, or, if it is unreasonable to expect him to become re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so re-engaged.

7. Any sum attributable to the proceeds of sale of any asset of such a business which is re-invested or to be re-invested in the business within 13 weeks of the date of sale or such longer period as may be reasonable to allow for the re-investment.

8. Any arrears of, or any concessionary payment made to compensate for arrears due to non-payment of—

- (a) any payment specified in paragraph 4, 6 or 7 of Schedule 3; or
- (b) an income-related benefit or family income supplement under the Family Income Supplements Act (Northern Ireland) 1971<sup>(91)</sup>, supplementary benefit under the Supplementary Benefits (Northern Ireland) Order 1977<sup>(92)</sup> or housing benefit under the Housing Benefits (Northern Ireland) Order 1983<sup>(93)</sup>,

but only for a period of 52 weeks from the date of the receipt of the arrears or of the concessionary payment.

9. Any sum—

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(91) 1971 c. 8 (N.I.); repealed with effect from 11th April 1988 by Schedule 10 to the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18))

(92) S.I. 1977/2156 (N.I. 27); repealed in part with effect from 11th April 1988 by Schedule 10 to the Social Security (Northern Ireland) Order 1986

(93) S.I. 1983/1121 (N.I. 14); repealed with effect from 11th April 1988 by Schedule 10 to the Social Security (Northern Ireland) Order 1986

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- (a) paid to the claimant in consequence of damage to, or loss of, the home or any personal possession and intended for its repair or replacement; or
- (b) acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvements to the home,

which is to be used for the intended purpose, for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to enable the claimant to effect the repairs, replacement or improvements.

10. Any sum—

- (a) deposited with a housing association as defined in Article 114 of the Housing (Northern Ireland) Order 1981<sup>(94)</sup> (interpretation) as a condition of occupying the home; or
- (b) which was so deposited and which is to be used for the purchase of another home, for the period of 26 weeks or such longer period as is reasonable in the circumstances to complete the purchase.

11. Any personal possessions except those which have been acquired by the claimant with the intention of reducing his capital in order to secure entitlement to disability working allowance or to increase the amount of that benefit.

12. The value of the right to receive any income under an annuity and the surrender value (if any) of such an annuity.

13. Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant, the value of the trust fund and the value of the right to receive any payment under that trust.

14. The value of the right to receive any income under a life interest.

15. The value of the right to receive any income which is disregarded under paragraph 1 of Schedule 2 or paragraph 21 of Schedule 3.

16. The surrender value of any policy of life insurance.

17. Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

18. Any payment made by a Health and Social Services Board under section 122, 123 or 164 of the Children and Young Persons Act (Northern Ireland) 1968.

19. Any social fund payment under Part IV of the Order.

20. Any refund of tax which falls to be deducted under section 26 of the Finance Act 1982 (deductions of tax from certain loan interest) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements to the home.

21. Any capital which by virtue of regulation 28 (capital treated as income) or 47 (treatment of student loans) is to be treated as income.

22. Where a payment of capital is made in a currency other than sterling, any banking charge or commission payable in converting that payment to sterling.

23.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”) or the Independent Living Fund.

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<sup>(94)</sup> S.I. 1981/156 (N.I. 3); the definition of “housing association” was amended by Part I of Schedule 1 to the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9))

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(2) Any payment by or on behalf of a person who suffered or is suffering from haemophilia, or by or on behalf of his partner or former partner from whom he is not or, where either that person or his former partner has died, was not estranged or divorced, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person or that person's partner or former partner to whom this sub-paragraph refers;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by a person who is suffering from haemophilia, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent, or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of 2 years from that person's death.

(4) Any payment out of the estate of a person who suffered from haemophilia, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death ("the relevant date") had no partner or former partner from whom he was not estranged or divorced, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent, or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of 2 years from the relevant date.

(5) In the case of a person to whom or for whose benefit a payment under sub-paragraph (1), (2), (3) or (4) is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

24. The value of the right to receive an occupational or personal pension.

25. The value of the right to receive any rent.

26.—(1) Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling.

(2) In this paragraph "dwelling" includes any garage, garden and outbuildings which were formerly occupied by the claimant as his home and any premises not so occupied which it is impracticable or unreasonable to sell separately.

27. Any premises or land where the claimant is taking reasonable steps to dispose of those premises or that land, for a period of 26 weeks from the date on which he first took such steps, or

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such longer period as is reasonable in the circumstances to enable him to dispose of those premises or that land.

28. Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings, whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.

29. Any premises which the claimant intends to occupy as his home, to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is reasonable in the circumstances to enable those repairs or alterations to be carried out and the claimant to commence occupation of the premises.

30. Any premises occupied in whole or in part by the former partner of a claimant as his home; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced.

31. Any payment in kind made by a charity or under the Macfarlane (Special Payments) Trust or the Macfarlane (Special Payments) (No. 2) Trust.

32. Any payment not exceeding £200 made under section 4 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(95) or section 1 of the Employment and Training Act (Northern Ireland) 1950(96) as a training bonus to a person participating in provision or arrangements for training under either of those Acts but only for a period of 52 weeks from the date of the receipt of that payment.

33. Any payment made under arrangements made by the Department to compensate for the loss (in whole or in part) of entitlement to housing benefit.

34. Any payment made by the Department to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April 1988 but who did not become entitled to income support in respect of a period beginning with and including that day.

35. Any payment made under arrangements made by the Department to compensate for the loss of housing benefit supplement under regulation 19A of the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983.

36. Any payment made to a juror or witness in respect of attendance at court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

37. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988 or section 9A of the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (reduced liability for personal community charge) but only for a period of 52 weeks from the date of receipt of the payment.

38. Any grant made in Great Britain to the claimant in accordance with a scheme made under section 129 of the Housing Act 1988(97) or section 66 of the Housing (Scotland) Act 1988(98) (schemes for payments to assist local housing authority and local authority tenants to obtain other accommodation) which is to be used—

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(95) 1945 c. 6 (N.I.)

(96) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and by Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(97) 1988 c. 50

(98) 1988 c. 43

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- (a) to purchase premises intended for occupation as his home; or
- (b) to carry out repairs or alterations which are required to render premises fit for occupation as his home,

for a period of 26 weeks from the date on which he received such a grant or such longer period as is reasonable in the circumstances to enable the purchase, repairs or alterations to be completed and the claimant to commence occupation of those premises as his home.

39.—(1) Any payment or repayment made under regulation 3, 5 or 8 of the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 1989, but only for a period of 52 weeks from the date of receipt of the payment or repayment.

(2) Any payment or repayment made by the Department which is analogous to a payment or repayment mentioned in sub-paragraph (1), but only for a period of 52 weeks from the date of receipt of the payment or repayment.

40. Any payment made under regulation 8, 9, 10 or 12 of the Welfare Foods Regulations (Northern Ireland) 1988, but only for a period of 52 weeks from the date of receipt of the payment.

41. Any payment made under a scheme established by the Northern Ireland Office to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of receipt of the payment.

42. Any arrears of special war widow's payment which is disregarded under paragraph 42 of Schedule 3, but only for a period of 52 weeks from the date of receipt of the arrears.

43. Any payment made by the Department of Economic Development under the Disabled Persons (Employment) Act (Northern Ireland) 1945 or in accordance with provision or arrangements under section 1 of the Employment and Training Act (Northern Ireland) 1950, to assist disabled persons to obtain or retain employment despite their disability.

## SCHEDULE 5

Regulation 51

### Determination of appropriate maximum disability working allowance: claimant, child and young person allowance

(1) Claimant, child or young person	(2) Amount of allowance
1. Single claimant.	1. £42.40.
2. Claimant who is a member of a married or unmarried couple, or is a lone parent.	2. £58.80.
3. Child—	(a) (a) £10.40;
(a) aged less than 11 years;	(b) £17.25.
(b) aged not less than 11 but less than 16 years.	
4. Young person—	(a) (a) £21.45;
(a) aged not less than 16 but less than 18 years;	(b) £29.90.
(b) aged not less than 18 but less than 19 years.	

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## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These regulations provide for various matters which affect entitlement to disability working allowance. Regulations 3 and 4 and Schedule 1 concern the disabilities which place the claimant at a disadvantage in getting a job and the declaration of such disability by the claimant. Regulations 5 and 6 prescribe the circumstances in which a person is treated as being in Northern Ireland and provide for 16 hours work a week as a minimum requirement. Regulation 7 sets out the qualifying benefits for entitlement to disability working allowance. Regulations 8 to 11 make provision in respect of children and young persons who are normally living with the claimant as members of the household and the circumstances in which a person is to be treated as no longer being a member of the household.

Regulations 12 to 50 and Schedules 2, 3 and 4 are concerned with the calculation of income and capital; regulation 31 sets the capital limit at £16,000 and regulation 40 provides for tariff income on capital over £3,000 at the rate of £1 a week for every £250 excess capital.

Regulations 51 to 53 concern the computation of entitlement. Regulation 51 and Schedule 5 prescribe the maximum disability working allowance; for a single claimant £42.40, for a married or unmarried couple or lone parent £58.80 and for each child or young person £10.40 (under 11), £17.25 (under 16), £21.45 (under 18), or £29.90 (under 19). Regulation 52 sets the applicable amount for disability working allowance and regulation 53 fixes the percentage of income deductible from the maximum disability working allowance at 70 per cent.

Regulations 54 to 57 provide for various situations, including the death of the claimant and receipt of family credit, which may affect an award of disability working allowance.

Regulation 58 amends the Family Credit (General) Regulations (Northern Ireland) 1987 to make provision concerning entitlement to family credit and disability working allowance.

These regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Social Security in relation to Great Britain and accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980 (c. 30), are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee.