

## SCHEDULE 2

Regulations 83(f) and 84(1)(g)

### Housing Costs

#### *Housing Costs*

1.—(1) Subject to paragraphs 2 to 19, the housing costs applicable to a claimant are those costs—

- (a) which he or, where he is a member of a family, he or any member of that family is, in accordance with paragraph 2, liable to meet in respect of the dwelling occupied as the home which he or any other member of his family is treated as occupying, and
- (b) which qualify under paragraphs 14 to 16.

(2) In this Schedule—

“housing costs” means those costs to which sub-paragraph (1) refers;

“existing housing costs” means housing costs arising under an agreement entered into before 2nd October 1995, or under an agreement entered into after 1st October 1995 (“the new agreement”)—

- (a) which replaces an existing agreement between the same parties in respect of the same property;
- (b) where the existing agreement was entered into before 2nd October 1995, and
- (c) which is for a loan of the same amount as or less than the amount of the loan under the agreement it replaces, and for the purpose of determining the amount of the loan under the new agreement, any sum payable to arrange the new agreement and included in the loan shall be disregarded;

“new housing costs” means housing costs arising under an agreement entered into after 1st October 1995 other than an agreement referred to in the definition of “existing housing costs”;

“standard rate” means the rate for the time being specified in paragraph 11.

(3) For the purposes of this Schedule a disabled person is a person—

- (a) in respect of whom a disability premium, a disabled child premium, a pensioner premium where the claimant’s partner has attained the age of 75 or a higher pensioner premium is included in his applicable amount or the applicable amount of a person living with him;
- (b) who, had he in fact been entitled to a jobseeker’s allowance or to income support, would have had included in his applicable amount a disability premium, a disabled child premium, a pensioner premium where the claimant’s partner has attained the age of 75 or a higher pensioner premium, or
- (c) who satisfies the requirements of paragraph 9A of Schedule 2 to the Income Support Regulations<sup>(1)</sup> (pensioner premium for person aged 75 or over).

(4) For the purposes of sub-paragraph (3), a person shall not cease to be a disabled person on account of his being disqualified for receiving benefit or treated as capable of work by virtue of the operation of section 167E of the Benefits Act<sup>(2)</sup> (incapacity for work, disqualification etc.).

#### *Circumstances in which a person is liable to meet housing costs*

2.—(1) A person is liable to meet housing costs where—

<sup>(1)</sup> Paragraph 9A was substituted by regulation 5(a) of [S.R. 1989 No. 139](#)

<sup>(2)</sup> Section 167E was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 ([S.I. 1994/1898 \(N.I. 12\)](#))

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- (a) the liability falls upon him or his partner but not where the liability is to a member of the same household as the person on whom the liability falls;
  - (b) because the person liable to meet the housing costs is not meeting them, the claimant has to meet those costs in order to continue to live in the dwelling occupied as the home and it is reasonable in all the circumstances to treat the claimant as liable to meet those costs;
  - (c) he in practice shares the housing costs with other members of the household none of whom are close relatives either of the claimant or his partner, and—
    - (i) one or more of those members is liable to meet those costs, and
    - (ii) it is reasonable in the circumstances to treat him as sharing responsibility.
- (2) Where any one or more, but not all, members of the claimant's family are affected by a trade dispute, the housing costs shall be treated as wholly the responsibility of those members of the family not so affected.

*Circumstances in which a person is to be treated as occupying a dwelling as his home*

3.—(1) Subject to sub-paragraphs (2) to (13), a person shall be treated as occupying as his home the dwelling normally occupied as his home by himself or, if he is a member of a family, by himself and his family and he shall not be treated as occupying any other dwelling as his home.

(2) In determining whether a dwelling is the dwelling normally occupied as the claimant's home for the purposes of sub-paragraph (1) regard shall be had to any other dwelling occupied by the claimant or by him and his family whether or not that other dwelling is in Northern Ireland.

(3) Subject to sub-paragraph (4), where a single claimant or a lone parent is a full-time student or is on a training course and is liable to make payments (including payments of mortgage interest or analogous payments) in respect of either (but not both) the dwelling which he occupies for the purpose of attending his course of study or his training course or, as the case may be, the dwelling which he occupies when not attending his course, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.

(4) A full-time student shall not be treated as occupying a dwelling as his home for any week of absence from it, other than an absence occasioned by the need to enter hospital for treatment, outside the period of study, if the main purpose of his occupation during the period of study would be to facilitate attendance on his course.

(5) Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as his home and he is liable to make payments (including payments of mortgage interest or analogous payments) in respect of either (but not both) the dwelling normally occupied or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make those payments.

(6) Where a person is liable to make payments in respect of 2 (but not more than 2) dwellings, he shall be treated as occupying both dwellings as his home only—

- (a) where he has left and remains absent from the former dwelling occupied as the home through fear of violence in that dwelling or by a former member of his family and it is reasonable that housing costs should be met in respect of both his former dwelling and his present dwelling occupied as the home;
- (b) in the case of a couple or a member of a polygamous marriage where a partner is a full-time student or is on a training course and it is unavoidable that he or they should occupy 2 separate dwellings and reasonable that housing costs should be met in respect of both dwellings, or
- (c) in the case where a person has moved into a new dwelling occupied as the home, except where sub-paragraph (5) applies, for a period not exceeding 4 benefit weeks if his liability to make payments in respect of 2 dwellings is unavoidable.

(7) Where—

- (a) a person has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in;
- (b) he had claimed a jobseeker's allowance before moving in and either that claim has not yet been determined or it has been determined but an amount has not been included under this Schedule and if the claim has been refused a further claim has been made within 4 weeks of the date on which the claimant moved into the new dwelling occupied as the home, and
- (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and—
  - (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the claimant or any member of his family;
  - (ii) the move was delayed pending the outcome of an application under Part VIII of the Benefits Act for a social fund payment to meet a need arising out of the move or in connection with setting up the home in the dwelling and either a member of the claimant's family is aged 5 or under or the claimant's applicable amount includes a premium under paragraph 10, 11, 12, 13, 15 or 16 of Schedule 1 (applicable amounts), or
  - (iii) the person became liable to make payments in respect of the dwelling while he was a patient or was in residential accommodation,

he shall be treated as occupying the dwelling as his home for any period not exceeding 4 weeks immediately prior to the date on which he moved into the dwelling and in respect of which he was liable to make payments.

(8) This sub-paragraph applies to a person who enters residential accommodation—

- (a) for the purpose of ascertaining whether the accommodation suits his needs, and
- (b) with the intention of returning to the dwelling which he normally occupies as his home should, in the event, the residential accommodation prove not to suit his needs,

and while in the accommodation, the part of the dwelling which he normally occupies as his home is not let or, as the case may be, sub-let to another person.

(9) A person to whom sub-paragraph (8) applies shall be treated as occupying the dwelling he normally occupies as his home during any period (commencing with (and including) the day he enters the accommodation) not exceeding 13 weeks in which the person is resident in the accommodation, but only in so far as the total absence from the dwelling does not exceed 52 weeks.

(10) A person, other than a person to whom sub-paragraph (11) applies, shall be treated as occupying a dwelling as his home throughout any period of absence not exceeding 13 weeks, if, and only if—

- (a) he intends to return to occupy the dwelling as his home;
- (b) the part of the dwelling normally occupied by him has not been let or, as the case may be, sub-let to another person, and
- (c) the period of absence is unlikely to exceed 13 weeks.

(11) This sub-paragraph applies to a person whose absence from the dwelling he normally occupies as his home is temporary and—

- (a) he intends to return to occupy the dwelling as his home;
- (b) while the part of the dwelling which is normally occupied by him has not been let or, as the case may be, sub-let;
- (c) he is—

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- (i) detained in custody on remand pending trial or, as a condition of bail, required to reside in a hostel or, as the case may be, detained pending sentence upon conviction;
  - (ii) resident in a hospital or similar institution as a patient and is treated under regulation 55 (short periods of sickness) as capable of work;
  - (iii) undergoing or, as the case may be, his partner or his dependent child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
  - (iv) following, in the United Kingdom or elsewhere, a training course;
  - (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
  - (vi) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
  - (vii) a person who is, whether in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
  - (viii) a full-time student to whom sub-paragraph (3) or (6)(b) does not apply;
  - (ix) a person other than a person to whom sub-paragraph (8) applies, who is receiving care provided in residential accommodation, or
  - (x) a person to whom sub-paragraph (6)(a) does not apply and who has left the dwelling he occupies as his home through fear of violence in that dwelling or by a person who was formerly a member of his family, and
- (d) the period of his absence is unlikely to exceed a period of 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.
- (12) A person to whom sub-paragraph (11) applies is to be treated as occupying the dwelling he normally occupies as his home during any period of absence not exceeding 52 weeks beginning with and including the first day of that absence.

(13) In this paragraph—

- (a) “medically approved” means certified by a registered medical practitioner;
- (b) “patient” means a person who is undergoing medical or other treatment as an in-patient in a hospital or similar institution;
- (c) “residential accommodation” means accommodation—
  - (i) provided under Article 15 or 36 of the 1972 Order<sup>(3)</sup>;
  - (ii) which is a residential care home, or
  - (iii) which is a nursing home;
- (d) “training course” means such a course of training or instruction provided wholly or partly by, or on behalf of, or in pursuance of arrangements made with, or approved by or, on behalf of, a government department.

#### *Housing costs not met*

4.—(1) No amount may be met under the provisions of this Schedule—

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(3) Article 15 was extended by sections 1 and 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53) and amended by Schedule 5 to the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)) and paragraph 2(2) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20)). Article 36 was substituted by Article 25 of the Health and Personal Social Services (Northern Ireland) Order 1991 and amended by paragraph 2(3) to (5) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992

- (a) in respect of housing benefit expenditure, or
  - (b) where the claimant is in accommodation which is a residential care home or a nursing home except where he is in such accommodation during a temporary absence from the dwelling he occupies as his home and in so far as they relate to temporary absences, the provisions of paragraph 3(8) to (12) (circumstances in which a person is to be treated as occupying a dwelling as his home) apply to him during that absence.
- (2) Subject to sub-paragraphs (3) to (12), loans which, apart from this paragraph, qualify under paragraph 14 (loans on residential property) shall not so qualify where the loan was incurred during the relevant period and was incurred—
- (a) after 7th October 1996;
  - (b) after 2nd May 1994 and the housing costs applicable to that loan were not met in income support by virtue of the former paragraph 5A of Schedule 3 to the Income Support Regulations<sup>(4)</sup> or paragraph 4(2)(a) of that Schedule in any one or more of the 26 weeks preceding 7th October 1996, or
  - (c) subject to sub-paragraph (3), in the 26 weeks preceding 7th October 1996 by a person—
    - (i) who was not at that time entitled to income support, and
    - (ii) who becomes, or whose partner becomes entitled to a jobseeker's allowance after 6th October 1996 and that entitlement is within 26 weeks of an earlier entitlement to income support for the claimant or his partner.
- (3) Sub-paragraph (2)(c) shall not apply in respect of a loan where the claimant has interest payments on that loan met without restrictions under an award of income support in respect of a period commencing before 7th October 1996.
- (4) The “relevant period” for the purposes of this paragraph is any period during which the person to whom the loan was made—
- (a) is entitled to a jobseeker's allowance, or
  - (b) is living as a member of a family one of whom is entitled to a jobseeker's allowance,
- together with any linked period, that is to say a period falling between 2 such periods of entitlement to a jobseeker's allowance separated by not more than 26 weeks.
- (5) For the purposes of sub-paragraph (4)—
- (a) any week in the period of 26 weeks ending on 7th October 1996 on which there arose an entitlement to income support shall be taken into account in determining when the relevant period commences, and
  - (b) 2 or more periods of entitlement and any intervening linked periods shall together form a single relevant period.
- (6) Where the loan to which sub-paragraph (2) refers has been applied—
- (a) for paying off an earlier loan, and that earlier loan qualified under paragraph 14, or
  - (b) to finance the purchase of a property where a previous loan secured on another property was paid off (in whole or in part) with monies received from the sale of that property,
- then the amount of the loan to which sub-paragraph (2) applies is the amount (if any) by which the new loan exceeds the earlier loan.
- (7) Notwithstanding sub-paragraphs (1) to (6), housing costs shall be met in any case where a claimant satisfies any of the conditions specified in sub-paragraphs (8) to (11), but—
- (a) those costs shall be subject to any additional limitations imposed by the sub-paragraph, and

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(4) Paragraph 5A was inserted by regulation 2 of [S.R. 1994 No. 138](#) and revoked by Schedule 4 to [S.R. 1995 No. 301](#)

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(b) where the claimant satisfies the conditions in more than one of these sub-paragraphs, only one sub-paragraph shall apply in his case and the one that applies shall be the one most favourable to him.

(8) The conditions specified in this sub-paragraph are that—

(a) during the relevant period the claimant or a member of his family acquires an interest (“the relevant interest”) in a dwelling which he then occupies or continues to occupy as his home, and

(b) in the week preceding the week in which the relevant interest was acquired, housing benefit was payable to the claimant or a member of his family,

so however that the amount to be met by way of housing costs shall initially not exceed the aggregate of—

(i) the housing benefit payable in the week mentioned at sub-paragraph (8)(b), and

(ii) any amount included in the applicable amount of the claimant or a member of his family in accordance with regulation 83(f) or 84(1)(g) in that week,

and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of the acquisition, in the standard rate or in any housing costs which qualify under paragraph 16 (other housing costs).

(9) The condition specified in this sub-paragraph is that the loan was taken out, or an existing loan increased, to acquire alternative accommodation more suited to the special needs of a disabled person than the accommodation which was occupied before the acquisition by the claimant.

(10) The conditions specified in this sub-paragraph are that—

(a) the loan commitment increased in consequence of the disposal of the dwelling occupied as the home and the acquisition of an alternative such dwelling, and

(b) the change of dwelling was made solely by reason of the need to provide separate sleeping accommodation for children of different sexes aged 10 or over who belong to the same family as the claimant.

(11) The conditions specified in this sub-paragraph are that—

(a) during the relevant period the claimant or a member of his family acquires an interest (“the relevant interest”) in a dwelling which he then occupies as his home, and

(b) in the week preceding the week in which the relevant interest was acquired, the applicable amount of the claimant or a member of his family included an amount determined by reference to paragraph 16 and did not include any amount specified in paragraph 14 or 15,

so however that the amount to be met by way of housing costs shall initially not exceed the amount so determined, and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of acquisition, in the standard rate or in any housing costs which qualify under paragraph 16.

(12) Paragraphs 5 to 19 shall have effect subject to the provisions of this paragraph.

#### *Apportionment of housing costs*

5.—(1) Where for the purposes of Article 4 of, and Schedule 5 to, the Rates (Northern Ireland) Order 1977(5), it appears to the Department of the Environment, or it is deemed in pursuance of paragraphs 2 to 4 of that Schedule that the hereditament includes the home and that only a proportion of the rateable value of the hereditament is attributable to use for the purpose of a private dwelling, the amounts applicable under this Schedule shall be such proportion of the amounts applicable in respect of the hereditament or premises as a whole as is equal to the proportion of the rateable value

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(5) [S.I. 1977/2157 \(N.I. 28\)](#)

of the hereditament attributable to the part of the hereditament used for the purposes of a private tenancy.

(2) Where responsibility for expenditure which relates to housing costs met under this Schedule is shared, the amounts applicable shall be calculated by reference to the appropriate proportion of that expenditure for which the claimant is responsible.

#### *Existing housing costs*

6.—(1) Subject to the provisions of this Schedule, the existing housing costs to be met in any particular case are—

- (a) where the claimant has been entitled to a jobseeker's allowance for a continuous period of 26 weeks or more, the aggregate of—
  - (i) an amount determined in the manner set out in paragraph 9 (calculation of loans) by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 14 or 15, and
  - (ii) an amount equal to any payments which qualify under paragraph 16(1)(a) to (c) (other housing costs);
- (b) where the claimant has been entitled to a jobseeker's allowance for a continuous period of not less than 8 weeks but less than 26 weeks, an amount which is half the amount which would fall to be met by applying the provisions of sub-paragraph (a);
- (c) in any other case, nil.

(2) For the purposes of sub-paragraph (1), the eligible capital for the time being owing shall be determined on the date the existing housing costs are first met and thereafter on each anniversary of that date.

#### *New housing costs*

7.—(1) Subject to the provisions of this Schedule, the new housing costs to be met in any particular case are—

- (a) where the claimant has been entitled to a jobseeker's allowance for a continuous period of 39 weeks or more, an amount—
  - (i) determined in the manner set out in paragraph 9 (calculation of loans) by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 14 or 15, and
  - (ii) equal to any payments which qualify under paragraph 16(1)(a) to (c) (other housing costs);
- (b) in any other case, nil.

(2) For the purposes of sub-paragraph (1), the eligible capital for the time being owing shall be determined on the date the new housing costs are first met and thereafter on each anniversary of that date.

(3) This sub-paragraph applies to a claimant who at the time the claim is made has been refused payments under a policy of insurance on the grounds that—

- (a) the claim under the policy is the outcome of a pre-existing medical condition which, under the terms of the policy, does not give rise to any payment by the insurer, or
- (b) he was infected by the Human Immunodeficiency Virus,

and the policy was taken out to insure against the risk of being unable to maintain repayments on a loan which is secured by a mortgage or a charge over land.

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(4) This sub-paragraph applies subject to sub-paragraph (7) where a person claims a jobseeker's allowance because of—

- (a) the death of a partner, or
- (b) being abandoned by his partner,

and where the person's family includes a child.

(5) This sub-paragraph applies to a person who at the time the claim is made is engaged in caring for a person who falls within any of the circumstances specified in regulation 51(3)(c)(i) to (iii) (remunerative work).

(6) In the case of a claimant to whom sub-paragraph (3), (4) or (5) applies, any new housing costs shall be met as though they were existing housing costs and paragraph 6 applied to them.

(7) Sub-paragraph (4) shall cease to apply to a person who subsequently becomes one of a couple.

#### *General exclusions from paragraphs 6 and 7*

8.—(1) Paragraphs 6 and 7 shall not apply where—

- (a) the claimant or his partner is aged 60 or over;
- (b) the housing costs are payments where the dwelling occupied as the home is a tent, in respect of the tent and the site on which it stands.

(2) In a case falling within sub-paragraph (1), the housing costs to be met are—

- (a) where head (a) applies, an amount—
  - (i) determined in the manner set out in paragraph 9 (calculation for loans) by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 14 or 15, and
  - (ii) equal to the payments which qualify under paragraph 16 (other housing costs);
- (b) where head (b) applies, an amount equal to the payments which qualify under paragraph 16(1)(d).

#### *The calculation for loans*

9.—(1) The weekly amount of existing housing costs or, as the case may be, new housing costs to be met under this Schedule in respect of a loan which qualifies under paragraph 14 or 15 shall be calculated by applying the formula—

$$\frac{(A \times B) \times C}{52}$$

where—

A = the amount of the loan which qualifies under paragraph 14 or 15;

B = the standard rate for the time being specified in respect of that loan under paragraph 11;

C = the difference between 100 per cent. and the applicable percentage of income tax within the meaning of section 369(1A) of the Income and Corporation Taxes Act 1988<sup>(6)</sup> (mortgage interest payable under deduction of tax) for the year of assessment in which the payment of interest becomes due.

(2) Where section 369 of the Income and Corporation Taxes Act 1988 does not apply to the interest on a loan or a part of a loan, the formula applied in sub-paragraph (1) shall have effect as if C had a value of 1.

<sup>(6)</sup> 1988 c. 1; section 369(1A) was inserted by section 81(3) of the Finance Act 1994 (c. 9)



*General provisions applying to new and existing housing costs*

10.—(1) Where a person enters into a new agreement in respect of a dwelling and an agreement entered into before 2nd October 1995 (“the earlier agreement”) continues in operation independently of the new agreement, then—

- (a) the housing costs applicable to the new agreement shall be calculated by reference to the provisions of paragraph 7 (new housing costs);
- (b) the housing costs applicable to the earlier agreement shall be calculated by reference to the provisions of paragraph 6 (existing housing costs),

and the resulting amounts shall be aggregated.

(2) Sub-paragraph (1) does not apply in the case of a claimant to whom paragraph 8 (general exclusions from paragraphs 6 and 7) applies.

(3) Where for the time being a loan exceeds, or in a case where more than one loan is to be taken into account, the aggregate of those loans exceeds the appropriate amount specified in sub-paragraph (4), then the amount of the loan or, as the case may be, the aggregate amount of those loans, shall for the purposes of this Schedule, be the appropriate amount.

(4) Subject to sub-paragraphs (5) to (10), the appropriate amount is £100,000.

(5) Where a person is treated under paragraph 3(6) (payments in respect of 2 dwellings) as occupying 2 dwellings as his home, then the restrictions imposed by sub-paragraph (3) shall be applied separately to the loans for each dwelling.

(6) In a case to which paragraph 5 (apportionment of housing costs) applies, the appropriate amount for the purposes of sub-paragraph (3) shall be the lower of—

- (a) a sum determined by applying the formula—

$$P \times Q.$$

where—

P = the relevant fraction for the purposes of paragraph 5, and

Q = the amount or, as the case may be, the aggregate amount for the time being of any loan or loans which qualify under this Schedule, or

- (b) the sum for the time being specified in sub-paragraph (4).

(7) In a case to which paragraph 14(3) or 15(3) (loans which qualify in part only) applies, the appropriate amount for the purposes of sub-paragraph (3) shall be the lower of—

- (a) a sum representing for the time being the part of the loan applied for the purposes specified in paragraph 14(1) or, as the case may be, 15(1), or
- (b) the sum for the time being specified in sub-paragraph (4).

(8) In the case of any loan to which paragraph 15(2)(k) (loan taken out and used for the purpose of adapting a dwelling for the special needs of a disabled person) applies the whole of the loan, to the extent that it remains unpaid, shall be disregarded in determining whether the amount for the time being specified in sub-paragraph (4) is exceeded.

(9) Where in any case the amount for the time being specified for the purposes of sub-paragraph (4) is exceeded and there are 2 or more loans to be taken into account under either or both paragraphs 14 and 15, then the amount of eligible interest in respect of each of those loans to the extent that the loans remain outstanding shall be determined as if each loan had been reduced to a sum equal to the qualifying portion of that loan.

(10) For the purposes of sub-paragraph (9), the qualifying portion of a loan shall be determined by applying the following formula—

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$$R \times \frac{S}{T}$$

where—

- R = the amount for the time being specified for the purposes of sub-paragraph (4);
- S = the amount of the outstanding loan to be taken into account;
- T = the aggregate of all outstanding loans to be taken into account under paragraphs 14 and 15.

#### *The standard rate*

11.—(1) The standard rate is the rate of interest applicable to a loan which qualifies under this Schedule and—

- (a) except where sub-paragraph (2) applies, is 7·74 per cent. per annum, or
- (b) where sub-paragraph (2) applies, shall equal the actual rate of interest charged on the loan on the day the housing costs first fall to be met.

(2) This sub-paragraph applies where the actual rate of interest charged on the loan which qualifies under this Schedule is less than 5 per cent. per annum on the day the housing costs first fall to be met and ceases to apply when the actual rate of interest on that loan is 5 per cent. per annum or higher.

(3) Where in a case to which sub-paragraph (2) applies, the actual rate of interest on the loan rises to 5 per cent. per annum or higher, the standard rate applicable on that loan shall be determined in accordance with sub-paragraph (1)(a).

#### *Excessive Housing Costs*

12.—(1) Housing costs which, apart from this paragraph, fall to be met under this Schedule shall be met only to the extent specified in sub-paragraph (3) where—

- (a) the dwelling occupied as the home, excluding any part which is let, is larger than is required by the claimant and his family and any child or young person to whom regulation 78(4) (foster children) applies and any other non-dependants having regard, in particular, to suitable alternative accommodation occupied by a household of the same size;
- (b) the immediate area in which the dwelling occupied as the home is located is more expensive than other areas in which suitable alternative accommodation exists, or
- (c) the outgoings of the dwelling occupied as the home which are met under paragraphs 14 to 16 are higher than the outgoings of suitable alternative accommodation in the area.

(2) For the purposes of sub-paragraph (1), no regard shall be had to the capital value of the dwelling occupied as the home.

(3) Subject to sub-paragraphs (4) to (9), the amount of the loan which falls to be met shall be restricted and the excess over the amounts which the claimant would need to obtain suitable alternative accommodation shall not be allowed.

(4) Where, having regard to the relevant factors, it is not reasonable to expect the claimant and his family to seek alternative cheaper accommodation, no restriction shall be made under sub-paragraph (3).

(5) In sub-paragraph (4) “the relevant factors” are—

- (a) the availability of suitable accommodation and the level of housing costs in the area, and
- (b) the circumstances of the family including in particular the age and state of health of its members, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any

child or young person who is a member of his family, or any child or young person who is not treated as part of his family by virtue of regulation 78(4).

(6) Where sub-paragraph (4) does not apply and the claimant (or other member of the family) was able to meet the financial commitments for the dwelling occupied as the home when these were entered into, no restriction shall be made under this paragraph during the first 26 weeks of any period of entitlement to a jobseeker's allowance nor during the next 26 weeks if and so long as the claimant uses his best endeavours to obtain cheaper accommodation or, as the case may be, no restriction shall be made under this paragraph on review during the 26 weeks from and including the date of the review nor during the next 26 weeks if and so long as the claimant uses his best endeavours.

(7) For the purposes of calculating any period of 26 weeks referred to in sub-paragraph (6), and for those purposes only, a person shall be treated as entitled to a jobseeker's allowance for any period of 12 weeks or less in respect of which he was not in receipt of a jobseeker's allowance and which fell immediately between periods in respect of which he was in receipt thereof.

(8) Any period in respect of which—

(a) a jobseeker's allowance was paid to a person, and

(b) it was subsequently determined on appeal or review that he was not entitled to a jobseeker's allowance for that period,

shall be treated for the purposes of sub-paragraph (7) as a period in respect of which he was not in receipt of a jobseeker's allowance.

(9) Paragraph 13(1)(c) to (f) (linking rule) shall apply to sub-paragraph (7) as it applies to paragraphs 6 and 7 (existing and new housing costs) but with the modification that the words "Subject to sub-paragraph (2)" are omitted and as if references to "the claimant" were references to the person mentioned in sub-paragraph (7).

#### *Linking rule*

13.—(1) Subject to sub-paragraph (2) for the purposes of this Schedule—

(a) a person shall be treated as being in receipt of a jobseeker's allowance during the following periods—

(i) any period in respect of which it was subsequently held, on appeal or review, that he was so entitled to a jobseeker's allowance, and

(ii) any period of 12 weeks or less in respect of which he was not in receipt of a jobseeker's allowance and which fell immediately between periods in respect of which he was or was treated as being in receipt thereof or to which head (a)(i) applies;

(b) a person shall be treated as not being in receipt of a jobseeker's allowance during any period other than a period to which head (a)(ii) applies in respect of which it is subsequently held on appeal or review that he was not so entitled;

(c) where—

(i) the claimant was a member of a couple or a polygamous marriage;

(ii) his partner was, in respect of a past period, in receipt of a jobseeker's allowance for himself and the claimant;

(iii) the claimant is no longer a member of that couple or polygamous marriage, and

(iv) the claimant made his claim for a jobseeker's allowance within 12 weeks of ceasing to be a member of that couple or polygamous marriage,

he shall be treated as having been in receipt of a jobseeker's allowance for the same period as his former partner had been or had been treated, for the purposes of this Schedule, as having been;

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- (d) where the claimant's partner's applicable amount was determined in accordance with paragraph 1(1) (single claimant) or (2) (lone parent) of Schedule 1 (applicable amounts) in respect of a past period, provided that the claim was made within 12 weeks of the claimant and his partner becoming one of a couple or polygamous marriage, the claimant shall be treated as having been in receipt of a jobseeker's allowance for the same period as his partner had been or had been treated, for the purposes of this Schedule, as having been;
- (e) where the claimant is a member of a couple or a polygamous marriage and his partner was, in respect of a past period, in receipt of a jobseeker's allowance for himself and the claimant, and the claimant has begun to receive a jobseeker's allowance as a result of an election by the members of the couple or polygamous marriage, he shall be treated as having been in receipt of a jobseeker's allowance for the same period as his partner had been or had been treated, for the purposes of this Schedule, as having been;
- (f) where—
  - (i) the claimant was a member of a family of a person (not being a former partner) entitled to a jobseeker's allowance and at least one other member of that family was a child or young person;
  - (ii) the claimant becomes a member of another family which includes that child or young person, and
  - (iii) the claimant made his claim for a jobseeker's allowance within 12 weeks of the date on which the person entitled to a jobseeker's allowance mentioned in head (f)(i) ceased to be so entitled,

the claimant shall be treated as being in receipt of a jobseeker's allowance for the same period as that person had been or had been treated, for the purposes of this Schedule, as having been.

(2) Where a claimant, with the care of a child, has ceased to be in receipt of a jobseeker's allowance in consequence of the payment of child support maintenance under the Child Support Order and immediately before ceasing to be so in receipt an amount determined in accordance with paragraph 6(1)(a)(i) or 7(1)(a)(i) was applicable to him, then—

- (a) if the child support maintenance assessment concerned is terminated or replaced on review by a lower assessment in consequence of the coming into operation on or after 18th April 1995 of regulations made under the Child Support Order, or
- (b) where the child support maintenance assessment concerned is an interim maintenance assessment and, in circumstances other than those referred to in head (a), it is terminated or replaced after termination by another interim maintenance assessment or by a maintenance assessment made in accordance with Part I of Schedule 1 to the Child Support Order, in either case of a lower amount than the assessment concerned,

sub-paragraph (1)(a)(ii) shall apply to him as if for "any period of 12 weeks or less" there were substituted "any period of 26 weeks or less".

(3) For the purposes of this Schedule, where a claimant has ceased to be entitled to a jobseeker's allowance because he or his partner is participating in an employment rehabilitation programme established under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(7) he shall be treated as if he had been in receipt of a jobseeker's allowance for the period during which he or his partner was participating in such arrangements or attending such a course.

(4) Where, for the purposes of sub-paragraphs (1) and (3), a person is treated as being in receipt of a jobseeker's allowance, for a certain period, he shall be treated as being entitled to a jobseeker's allowance for the same period.

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(7) 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))

(5) For the purposes of this Schedule, sub-paragraph (6) applies where a person is not entitled to an income-based jobseeker's allowance by reason only that he has—

- (a) capital exceeding £8,000;
- (b) income exceeding the applicable amount which applies in his case, or
- (c) both capital exceeding £8,000 and income exceeding the applicable amount which applies in his case.

(6) A person to whom sub-paragraph (5) applies shall be treated as entitled to a jobseeker's allowance throughout any period of not more than 39 weeks which comprises only days—

- (a) on which he is entitled to a contribution-based jobseeker's allowance, statutory sick pay or incapacity benefit, or
- (b) on which he is, although not entitled to any of the benefits mentioned in head (a), entitled to be credited with earnings equal to the lower earnings limit for the time being in operation in accordance with regulation 9 of the Social Security (Credits) Regulations (Northern Ireland) 1975<sup>(8)</sup> (credits for unemployment or incapacity for work).

(7) Subject to sub-paragraph (8), a person to whom sub-paragraph (5) applies and who is either a person to whom regulation 13(4) (persons with caring responsibilities) applies or a lone parent shall, for the purposes of this Schedule, be treated as entitled to a jobseeker's allowance throughout any period of not more than 39 weeks following the refusal of a claim for a jobseeker's allowance made by or on behalf of that person.

(8) Sub-paragraph (7) shall not apply in relation to a person mentioned in that sub-paragraph who, during the period referred to in that sub-paragraph—

- (a) is engaged in, or is treated as engaged in, remunerative work or whose partner is engaged in, or is treated as engaged in, remunerative work;
- (b) is treated as not available for employment by virtue of regulation 15(a) (circumstances in which students are not treated as available for employment);
- (c) is temporarily absent from Northern Ireland, other than in the circumstances specified in regulation 50 (temporary absence from Northern Ireland).

(9) In a case where—

- (a) sub-paragraphs (6) and (7) apply solely by virtue of sub-paragraph (5)(b), and
- (b) the claimant's income includes payments under a policy taken out to insure against the risk that the policy holder is unable to meet any loan or payment which qualifies under paragraphs 14 to 16,

sub-paragraphs (6) and (7) shall have effect as if for "throughout any period of not more than 39 weeks" there shall be substituted "throughout any period that payments are made in accordance with the terms of the policy".

(10) This sub-paragraph applies—

- (a) to a person who claims a jobseeker's allowance, or in respect of whom a jobseeker's allowance is claimed, and who—
  - (i) received payments under a policy of insurance taken out to insure against loss of employment, and those payments are exhausted, and
  - (ii) had a previous award of a jobseeker's allowance where the applicable amount included an amount by way of housing costs, and

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<sup>(8)</sup> S.R. 1975 No. 113; regulation 9 was amended by S.R. 1976 No. 321, S.R. 1977 No. 132, S.R. 1978 No. 77, S.R. 1982 No. 42, S.R. 1987 Nos. 153 and 220, S.R. 1988 Nos. 105 and 326, S.R. 1989 No. 368, S.R. 1992 No. 135, S.R. 1994 Nos. 65 and 265 and S.R. 1995 No. 150

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- (b) where the period in respect of which the previous award of a jobseeker's allowance was payable ended not more than 26 weeks before the date the claim was made.

(11) Where sub-paragraph (10) applies, in determining—

- (a) for the purposes of paragraph 6(1) whether a person has been entitled to a jobseeker's allowance for a continuous period of 26 weeks or more, or
- (b) for the purposes of paragraph 7(1) whether a claimant has been entitled to a jobseeker's allowance for a continuous period of 39 weeks or more,

any week falling between the date of the termination of the previous award and the date of the new claim shall be ignored.

#### *Loans on residential property*

14.—(1) A loan qualifies under this paragraph where the loan was taken out to defray monies applied for any of the following purposes—

- (a) acquiring an interest in the dwelling occupied as the home, or
- (b) paying off another loan to the extent that the other loan would have qualified under head (a) had the loan not been paid off.

(2) For the purposes of this paragraph, references to a loan include also a reference to money borrowed under a hire purchase agreement for any purpose specified in sub-paragraph (1).

(3) Where a loan is applied only in part for the purposes specified in sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

#### *Loans for repairs and improvements to the dwelling occupied as the home*

15.—(1) A loan qualifies under this paragraph where the loan was taken out, with or without security, for the purpose of—

- (a) carrying out repairs and improvements to the dwelling occupied as the home;
- (b) paying any service charge imposed to meet the cost of repairs and improvements to the dwelling occupied as the home;
- (c) paying off another loan to the extent that the other loan would have qualified under head (a) or (b) had the loan not been paid off,

and the loan was used for that purpose, or is used for that purpose within 6 months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case.

(2) In sub-paragraph (1) “repairs and improvements” means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling—

- (a) provision of a fixed bath, shower, wash basin, sink or lavatory, and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
- (b) repairs to existing heating system;
- (c) damp proof measures;
- (d) provision of ventilation and natural lighting;
- (e) provision of drainage facilities;
- (f) provision of facilities for preparing and cooking food;
- (g) provision of insulation of the dwelling occupied as the home;
- (h) provision of electric lighting and sockets;
- (i) provision of storage facilities for fuel or refuse;

- (j) repairs of unsafe structural defects;
- (k) adapting a dwelling for the special needs of a disabled person, or
- (l) provision of separate sleeping accommodation for children of different sexes aged 10 or over who are part of the same family as the claimant.

(3) Where a loan is applied only in part for the purposes specified in sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

#### *Other housing costs*

16.—(1) Subject to the deduction specified in sub-paragraph (2), there shall be met under this paragraph the amounts, calculated on a weekly basis, in respect of the following housing costs—

- (a) ground rent;
- (b) service charges;
- (c) payments by way of rentcharge;
- (d) where the dwelling occupied as the home is a tent, payments in respect of the tent and the site on which it stands.

(2) Subject to sub-paragraph (3), the deductions to be made from the weekly amounts to be met under this paragraph are—

- (a) where the costs are inclusive of any of the items mentioned in paragraph 5(2) of Schedule 1 to the Housing Benefit (General) Regulations (Northern Ireland) 1987<sup>(9)</sup> (payment in respect of fuel charges), the deductions prescribed in that paragraph unless the claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, in which case the estimated amount;
- (b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations (Northern Ireland) 1987 (ineligible service charges) the amounts attributable to those ineligible service charges or where that amount is not separated from or separately identified within the housing costs to be met under this paragraph, such part of the payments made in respect of those housing costs which are fairly attributable to the provision of those ineligible services having regard to the costs of comparable services;
- (c) any amount for repairs and improvements, and for this purpose the expression “repairs and improvements” has the same meaning it has in paragraph 15(2).

(3) Where arrangements are made for the housing costs, which are met under this paragraph and which are normally paid for a period of 52 weeks, to be paid instead for a period of 53 weeks, or to be paid irregularly, or so that no such costs are payable or collected in certain periods, or so that the costs for different periods in the year are of different amounts, the weekly amount shall be the amount payable for the year divided by 52.

(4) Where the claimant or a member of his family—

- (a) pays for reasonable repairs or redecoration to be carried out to the dwelling they occupy;
- (b) that work was not the responsibility of the claimant or any member of his family, and
- (c) in consequence of that work being done, the costs which are normally met under this paragraph are waived,

then those costs shall, for a period not exceeding 8 weeks, be treated as payable.

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(9) S.R. 1987 No. 461

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### *Non-dependant deductions*

17.—(1) Subject to sub-paragraphs (2) to (8), the following deductions from the amount to be met under paragraphs 1 to 16 in respect of housing costs shall be made—

- (a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work, £32·00;
- (b) in respect of a non-dependant aged 18 or over to whom head (a) does not apply, £6·00.

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (1)(a) applies because he is in remunerative work, where the claimant satisfies the adjudication officer that the non-dependant's gross weekly income is—

- (a) less than £76·00, the deduction to be made under this paragraph shall be the deduction specified in sub-paragraph (1)(b);
- (b) not less than £76·00 but less than £114·00, the deduction to be made under this paragraph shall be £10·00;
- (c) not less than £114·00 but less than £150·00, the deduction to be made under this paragraph shall be £16·00.

(3) Only one deduction shall be made under this paragraph in respect of a couple or, as the case may be, the members of a polygamous marriage, and where, but for this sub-paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of sub-paragraph (2), to the couple's or, as the case may be, all the members of the polygamous marriage's, joint weekly income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple or members of a polygamous marriage), the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the housing costs in respect of the dwelling occupied as the home payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying the dwelling occupied as the home of the claimant, if the claimant or any partner of his is—

- (a) blind or treated as blind within the meaning of paragraph 14(1)(h) and (2) of Schedule 1 (additional condition for the higher pensioner and disability premiums), or
- (b) receiving in respect of himself either—
  - (i) an attendance allowance, or
  - (ii) the care component of the disability living allowance.

(7) No deduction shall be made in respect of a non-dependant—

- (a) if, although he resides with the claimant, it appears to the adjudication officer that the dwelling occupied as his home is normally elsewhere;
- (b) if he is in receipt of a training allowance;
- (c) if he is a full-time student during a period of study or, if he is not in remunerative work, during a recognised summer vacation appropriate to his course;
- (d) if he is aged under 25 and in receipt of a jobseeker's allowance or income support;



- (e) in respect of whom a deduction in the calculation of a rent rebate or allowance falls to be made under regulation 63 of the Housing Benefit (General) Regulations 1987<sup>(10)</sup> (non-dependant deductions);
  - (f) to whom, but for regulation 2(5) (definition of non-dependant) paragraph (4) of that regulation would apply, or
  - (g) if he is not residing with the claimant because he has been a patient for a period in excess of 6 weeks, or is a prisoner, and for these purposes—
    - (i) “patient” and “prisoner” respectively have the meanings given in regulation 85(4) (special cases), and
    - (ii) the period of 6 weeks shall be calculated by reference to paragraph (2) of that regulation as if that paragraph applied in his case.
- (8) In the case of a non-dependant to whom sub-paragraph (2) applies because he is in remunerative work, there shall be disregarded from his gross income—
- (a) any attendance allowance or disability living allowance received by him;
  - (b) any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds which, had his income fallen to be calculated under regulation 103 (calculation of income other than earnings), would have been disregarded under paragraph 22 of Schedule 6 (income in kind), and
  - (c) any payment which, had his income fallen to be calculated under regulation 103 would have been disregarded under paragraph 41 of Schedule 6 (payments made under certain trusts and certain other payments).

#### *Continuity with Income Support*

18.—(1) For the purpose of providing continuity between income support and a jobseeker’s allowance—

- (a) any housing costs which would, had the claimant been entitled to income support, have been existing housing costs and not new housing costs shall, notwithstanding paragraphs 1 to 17, be treated as existing housing costs, and any qualifications or limitations which would have applied to those costs had the award been an award of income support shall likewise apply to the costs in so far as they are met in jobseeker’s allowance;
- (b) had the award of a jobseeker’s allowance been an award of income support and the housing costs which would then have been met would have included an additional amount met in accordance with paragraph 7 of Schedule 3 to the Income Support Regulations (add back), an amount equal to that additional amount shall be added to the housing costs to be met under this Schedule, but that amount shall be subject to the same qualifications and limitations as it would have been had the award been of income support, and
- (c) for the purposes of any linking rule, any reference to a jobseeker’s allowance in this Schedule shall be taken also to include a reference to income support.

(2) Any loan which, had the claimant been entitled to income support and not a jobseeker’s allowance, would have been a qualifying loan for the purposes of Schedule 3 to the Income Support Regulations by virtue of regulation 4 to the Income Support (General) (Amendment and Transitional) Regulations (Northern Ireland) 1995<sup>(11)</sup> shall be treated also as a qualifying loan for the purposes of paragraph 14 or 15, as the case may be; and for the purpose of determining whether a claimant

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<sup>(10)</sup> Regulation 63 was amended by S.R. 1989 No. 125, S.R. 1990 Nos. 125, 136 and 345, S.R. 1992 Nos. 85 and 549, S.R. 1993 Nos. 145, 195 and 233, S.R. 1994 No. 81 and S.R. 1995 Nos. 71 and 84

<sup>(11)</sup> S.R. 1995 No. 350

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would satisfy the provision of regulation 4(2) of those regulations, a person in receipt of an income-based jobseeker's allowance shall be treated as being in receipt of income support.

*Rounding of Fractions*

19. Where any calculation made under this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.