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STATUTORY RULES OF NORTHERN IRELAND

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**1997 No. 456**

**Housing Renovation etc. Grants (Reduction  
of Grant) Regulations (Northern Ireland) 1997**

Part IV

Income and Capital

Chapter I

*General*

**Income and capital of relevant person**

**15.** Where a relevant person is a member of a family, the income and capital of any member of that family shall, except where otherwise provided, be treated as the income and capital of that person.

**Determination of income and capital of members of relevant person's family and of a polygamous marriage**

**16.—(1)** The income and capital of a relevant person's partner and, subject to paragraph (2) and to regulation 31 (modifications in respect of child and young person), the income of a child or young person which by virtue of regulation 15 is to be treated as income and capital of the relevant person shall be determined in accordance with the following provisions of this Part in like manner as for the relevant person; and any reference to the relevant person shall be construed for the purposes of this Part as if it were a reference to his partner or that child or young person.

(2) Regulations 24(2) and 26(2), so far as they relate to paragraphs 1 to 12 of Schedule 2 (sums to be disregarded in the determination of earnings), shall not apply to a child or young person.

(3) Where a relevant person or the partner of that person is married polygamously to two or more members of his household—

- (a) the relevant person 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 determined in accordance with the following provisions of this Part in like manner as for the relevant person or, as the case may be, as for any child or young person who is a member of his family.

Chapter II

*Income*

**Determination of income on a weekly basis**

**17.—(1)** The income of a relevant person shall be determined on a weekly basis by aggregating—

- (a) his average weekly earnings from employment as an employed earner, determined in accordance with this Chapter and Chapter III,
- (b) his average weekly earnings from employment as a self-employed earner, determined in accordance with this Chapter and Chapter IV,
- (c) his average weekly income other than earnings, determined in accordance with this Chapter and Chapter V,
- (d) the weekly tariff income determined under regulation 39 (determination of tariff income from capital), and by then deducting the average weekly relevant child care charge, determined in accordance with regulation 18 (treatment of child care charges), up to a maximum deduction in respect of the relevant person's family of £60 per week.

(2) For the purposes of paragraph (1) "income" includes income to which regulations 29 (annuity treated as income), 30 (notional income), 42 (determination of grant income) and 45 (treatment of student loans) refer.

### **Treatment of child care charges**

**18.**—(1) This regulation applies where a relevant person has incurred relevant child care charges and—

- (a) is a lone parent and is engaged in remunerative work;
- (b) is a member of a couple both of whom are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other member is incapacitated.

(2) Relevant child care charges shall be determined over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to care.

(3) For the purposes of paragraph (1)(c) the other member of a couple is incapacitated where—

- (a) the relevant person's applicable amount includes—
  - (i) a disability premium; or
  - (ii) a higher pensioner premium by virtue of the satisfaction of paragraph 10(2)(b) of Schedule 1;

on account of the other member's incapacity;

- (b) the relevant person's applicable amount would include a disability premium or a higher pensioner premium on account of the other member's incapacity, but for that other member being treated as capable of work by virtue of a determination made in accordance with regulations(1) made under section 167E of the 1992 Act(2) (Incapacity for work: disqualification, etc);
- (c) the relevant person (within the meaning of regulation 4) is or is treated as incapable of work, and has been so incapable or has been so treated as incapable of work in accordance with the provisions of, and regulations made under, Part XIIA of the 1992 Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;
- (d) there is payable in respect of him one or more of the following—

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(1) See the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 41) and the Social Security (Incapacity for Work) (Miscellaneous Amendment) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 149)

(2) Section 167E was inserted into the 1992 Act by Article 8(1) of S.I. 1994/1898 (N.I. 12)

- (i) short-term incapacity benefit at the higher rate or long-term incapacity benefit under paragraphs 2 and 2A of Part I of Schedule 4 to the 1992 Act<sup>(3)</sup> (rates of benefits, etc.);
  - (ii) attendance allowance under section 64 of that Act (entitlement to an attendance allowance);
  - (iii) severe disablement allowance under section 68 of that Act<sup>(4)</sup> (severe disablement allowance: entitlement and rate);
  - (iv) disability living allowance under section 71 of that Act (disability living allowance);
  - (v) increase of disablement pension under section 104 of that Act (increase where constant attendance needed);
  - (vi) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v);
- (e) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (d) refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient within the meaning of regulation 18(2) of the Housing Benefit (General) Regulations (Northern Ireland) 1987<sup>(5)</sup> (patients);
- (f) sub-paragraph (d) or (e) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding statutory provision having effect in Great Britain<sup>(6)</sup>; or
- (g) he has an invalid carriage or other vehicle provided to him by the Secretary of State under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977<sup>(7)</sup> (provision of vehicles for those suffering disability) or under section 46 of the National Health Service (Scotland) Act 1978<sup>(8)</sup> (provision of vehicles for persons suffering from physical defect or disability) or provided by the Department of Health and Social Services under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(9)</sup> (provision of vehicles for persons suffering from physical defect or disability).

(4) In this regulation—

“relevant child care charges” means the charges paid by the relevant person for care provided for any child of the relevant person’s family who is under the age of 11 years, other than charges paid in respect of the child’s compulsory education or charges paid by the relevant person to a partner or by a partner to a relevant person in respect of any child for whom either or any of them is responsible in accordance with regulation 7 (circumstances in which a person is to be treated as responsible or not responsible for another), where the care is provided—

- (a) by persons registered under Article 118(1) of the Children (Northern Ireland) Order 1995<sup>(10)</sup> (registration of persons acting as child minders and providing day care); or
- (b) by persons or institutions which are exempted from registration under Article 118(1) of the Children (Northern Ireland) Order 1995 by virtue of Article 121 of that Order;

and shall be determined on a weekly basis in accordance with paragraph (2).

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(3) Paragraphs 2 and 2A were substituted for paragraph 2 by Article 4(2) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and amended by Article 3(1) of, and Schedule 1 to, S.R. 1996 No. 73

(4) Section 68 was amended by Article 11 of, and paragraph 18 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and regulation 2(2) of S.R. 1994 No. 370

(5) S.R. 1987 No. 461; to which there are no relevant amendments

(6) S.I. 1994/1924

(7) 1977 c. 49; section 5(2) was amended and subsection (2A) inserted by the Public Health Laboratory Service Act 1979 (c. 23), section 1 and subsection (2B) was inserted by section 9 of the Health and Social Security Act 1984 (c. 48)

(8) 1978 c. 29; to which there are no relevant amendments

(9) S.I. 1972/1265 (N.I. 14); to which there are no relevant amendments

(10) S.I. 1995/755 (N.I. 2); to which there are no relevant amendments

### **Average weekly earnings of employed earners**

19. Where the income of a relevant person consists of or includes earnings from employment as an employed earner, his average weekly earnings from such employment shall be determined by reference to his earnings from such employment over the period of 52 weeks immediately preceding the application or, where his earnings fluctuate, over such other lesser period immediately preceding the application as may enable his average weekly earnings to be determined more accurately.

### **Average weekly earnings of self-employed earners**

20. Where the income of a relevant person consists of or includes earnings from employment as a self-employed earner, his average weekly earnings from such employment shall be determined by reference to his earnings from such employment, over the period of 52 weeks immediately preceding the application or, where his earnings from such employment fluctuate, over such other lesser period immediately preceding the application as may enable his average weekly earnings to be determined more accurately.

### **Average weekly income other than earnings**

21. Any part of a relevant person's income which does not consist of earnings shall be determined by reference to such income over the period of 52 weeks immediately preceding the application or, where such income fluctuates, over such lesser period immediately preceding the application as may enable his average weekly income to be determined more accurately.

### **Determination of weekly income**

22.—(1) For the purposes of regulations 19 (average weekly earnings of employed earners) and 21 (average 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;
- (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 any other case, by dividing the amount of the payment by the number equal to the number of days in the period to which it relates and multiplying the quotient by 7.

(2) For the purposes of regulation 20 (average weekly earnings of self-employed earners) the weekly amount shall be determined by dividing the relevant person's earnings during the assessment period by the number equal to the number of days in the assessment period and multiplying the quotient by 7.

## **Chapter III**

### *Employed Earners*

### **Earnings of employed earners**

23.—(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 payment in lieu of remuneration except any periodic sum paid to a relevant person on account of the termination of his employment by reason of redundancy;

- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only insofar as it represents loss of income;
  - (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
  - (e) any payment by way of a retainer;
  - (f) any payment made by the relevant person's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the employer in respect of—
    - (i) travelling expenses incurred by the relevant person between his home and place of employment,
    - (ii) expenses incurred by the relevant person under arrangements made for the care of a member of his family owing to the relevant person's absence from home;
  - (g) any award of compensation made under Article 146(4) or 151(1) of the Employment Rights (Northern Ireland) Order 1996(11) (remedies and compensation for unfair dismissal);
  - (h) any such sum as is referred to in section 112(3) of the 1992 Act (certain sums to be earnings for social security purposes);
  - (i) any statutory sick pay under Part XI of the 1992 Act or statutory maternity pay under Part XII of that Act or a corresponding payment under any statute of the Parliament of the United Kingdom extending solely to Great Britain;
  - (j) 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 (g) to (i) relate;
  - (k) any remuneration paid by or on behalf of an employer to the relevant person who for the time being is on maternity leave or is absent from work because he is ill.
- (2) Earnings shall not include—
- (a) 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;
  - (c) any occupational pension.

### **Determination of net earnings of employed earners**

24.—(1) For the purposes of regulation 19 (average weekly earnings of employed earners), the earnings of a relevant person derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings as determined under paragraph (3).

(2) There shall be disregarded from a relevant person's net earnings, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 2.

(3) For the purposes of paragraph (1) net earnings shall be determined by taking into account the gross earnings of the relevant person from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax,
  - (ii) primary Class 1 contributions under the 1992 Act;
- (b) one-half of any sum paid by the relevant person by way of a contribution towards an occupational pension scheme;

- (c) one-half of the amount calculated in accordance with paragraph (4) in respect of any qualifying contribution payable by the relevant person; and
  - (d) where those earnings include a payment which is payable under any statutory provision having effect in Great Britain and which corresponds to statutory sick pay or statutory maternity pay, any amount deducted from those earnings by way of any contributions which are payable under any statutory provision having effect in Great Britain and which correspond to primary Class 1 contributions under the 1992 Act.
- (4) The amount in respect of any qualifying contribution shall be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying contribution shall be determined—
- (a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;
  - (b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.
- (5) Where the relevant person 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 would have been deducted had the relevant person been employed in Northern Ireland.
- (6) In this regulation “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.

## Chapter IV

### *Self-employed Earners*

#### **Earnings of self-employed earners**

**25.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and shall include any allowance payable pursuant to provision or arrangements made by the Department of Economic Development<sup>(12)</sup> under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945<sup>(13)</sup> or section 1(1) of the Employment and Training Act (Northern Ireland) 1950<sup>(14)</sup> or any equivalent allowance payable under Republic of Ireland legislation to the relevant person for the purpose of assisting him in carrying on his business, unless at the date of the application the allowance has been terminated.

(2) “Earnings” shall not include any payment to which paragraph 23 or 24 of Schedule 3 refers (payments in respect of a person accommodated with the relevant person under arrangements made by a Health and Social Services Board, Health and Social Services trust, training school or voluntary organisation and payments made to the relevant person by a Health and Social Services Board, Health and Social Services trust or voluntary organisation in respect of persons temporarily in the relevant person’s care).

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(12) 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

(13) 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))

(14) 1950 c. 29 (N.I.); section 1(1) was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

### **Determination of net profit of self-employed earners**

**26.**—(1) For the purposes of regulation 20 (average weekly earnings of self-employed earners) the earnings of a relevant person 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(15), his share of the net profit derived from that employment, less—
  - (i) an amount in respect of income tax and of social security contributions payable under the 1992 Act determined in accordance with regulation 27 (deduction of tax and contributions for self-employed earners), and
  - (ii) one half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

(2) There shall be disregarded from a relevant person's net profit, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 2.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (9) applies, be determined by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred 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 1992 Act, determined in accordance with regulation 27 (deduction of tax and contributions for self-employed earners); and
- (c) one half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

(4) For the purposes of paragraph (1)(b) the net profit of the employment shall be determined by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(5) Subject to paragraph (6), no deduction shall be made under paragraph (3)(a) or (4), in respect of—

- (a) any capital expenditure;
- (b) any 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;
- (f) any expenses incurred in providing business entertainment; and
- (g) any debts, except bad debts proved to be such, but this sub-paragraph shall not apply to any expenses incurred in the recovery of a debt.

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

- (a) the replacement in the course of business of equipment or machinery; and
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(7) No deduction shall be made in respect of any expenses under paragraph (3)(a) or (4) where, given the nature and the amount of the expense, it has been unreasonably incurred.

(8) For avoidance of doubt—

- (a) a deduction shall not be made under paragraph (3)(a) or (4) 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 by the relevant person in respect of taxable supplies made to him, over any such tax received by him in respect of taxable supplies made by him, calculated with reference to 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.

(9) Where a relevant person 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 1992 Act, determined in accordance with regulation 27 (deduction of tax and contributions for self-employed earners); and
- (b) one half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

(10) For the avoidance of doubt where a relevant person is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed earner 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.

(11) In this regulation—

“qualifying premium” means any premium which at the date of application is payable periodically in respect of a retirement annuity contract or a personal pension scheme;

(12) The amount in respect of any qualifying premium shall be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying premium shall be determined—

- (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365;
- (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.

(13) Where the relevant person is a self-employed earner in the Republic of Ireland the amounts to be deducted for income tax and contributions under this regulation shall be such amounts as, in the opinion of the Executive, would have been deducted had the relevant person been employed in Northern Ireland.



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

**27.**—(1) The amount to be deducted in respect of income tax under regulation 26(1)(b)(i), (3)(b)(i) or (9)(a)(i) (determination of net profit of self-employed earners) shall be determined on the basis of the amount of chargeable income and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate or the basic rate and higher rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259 (1)(a) and (2) of the Income and Corporation Taxes Act 1988(16) (personal reliefs) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate and, if appropriate, the basic rate and higher rate of tax is to be applied and 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 26(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, (3) of the 1992 Act at the rate applicable at the date of application except where the relevant person's chargeable income is less than the amount for the time being specified in subsection (4) of that section (small earnings exception) for the tax year in which the date of the application falls; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and
  - (b) the amount of Class 4 contributions (if any) which would be payable under section 15(3) of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of the application 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 the application falls; but, if the assessment period is less than a year, those limits shall be reduced pro rata.
- (3) In this regulation “chargeable income” means—
- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 26;
  - (b) in the case of employment as a child minder, one third of the earnings of that employment.

### Chapter V

#### *Other Income*

## **Determination of income other than earnings**

**28.**—(1) For the purposes of regulation 21 (average weekly income other than earnings), the income of a relevant person which does not consist of earnings to be taken into account shall, subject to paragraphs (2) and (3), be his gross income and any capital treated as income under regulations 29 (annuity treated as income) or 31 (modifications in respect of child and young person).

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

(3) Where the payment of any benefit under the 1992 Act 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) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 23(2) applies (payments which are not earnings).

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(16) 1988 c. 1; section 257 was substituted by Section 33 of the Finance Act 1988 (c. 39) and, as respects the year 1996/97, amended by Section 74 of, and paragraph 13 of Schedule 20 and Part V(10) of Schedule 41 to, the Finance Act 1996 (c. 8). Section 259 was amended by sections 30 and 35 of, and paragraphs 1 and 5 of Schedule 3 to, the Finance Act 1988; and as respects the year 1996/97, by paragraph 17 of Schedule 20 and Part V(10) of Schedule 41 to the Finance Act 1996

### **Annuity treated as income**

**29.** Any payment received under an annuity shall be treated as income.

### **Notional income**

**30.—**(1) A relevant person shall be treated as possessing income of which he has deprived himself for the purpose of increasing the amount of grant.

(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) a personal pension scheme or retirement annuity contract where the relevant person is aged under 60,

any income which would have become available to the relevant person upon application being made, but which has not been acquired by him, shall be treated as possessed by the relevant person but only from the date on which it could be expected to have been acquired and an application been made.

(3) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—
  - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
  - (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
  - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(4) The amount of any income foregone in a case to which either paragraph (3)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund.

(5) The amount of any income foregone in a case to which either paragraph (3)(a)(iii) or subparagraph (3)(b) applies shall be the income that the relevant person could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available.

(6) 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, the Fund, the Independent Living (Extension) Fund, the Independent Living (1993) Fund or the Independent Living Fund, made—

- (a) to a third party in respect of a relevant person being a single person or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single person or by that member to the extent that it is used for food, ordinary clothing or footwear, household fuel, eligible rates or rent to which regulation 9

or 10 of the Housing Benefit (General) Regulations (Northern Ireland) 1987<sup>(17)</sup> refers, or both, of that single person or, as the case may be, of any member of that family;

- (b) to a relevant person being a single person or a 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 person or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

(7) Where—

- (a) a relevant person 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 relevant person shall be treated as possessing such earnings (if any) as is reasonable for that employment unless the relevant person satisfies the Executive that the means of that person are insufficient for him to pay or pay more for the service; but this paragraph shall not apply to a relevant person who is engaged by a charitable or voluntary organisation or is a volunteer if it is reasonable for him in any of those cases to provide his services free of charge.

(8) In the case of an application to which Article 64(3)(b) of the Order applies (renovation grants relating to 2 or more dwellings), there shall be treated as possessed by the relevant person 90 per cent of the amount of the aggregate of the rents of each of the dwellings to be provided, other than any in respect of which an owner-occupation certificate accompanies the application, which may reasonably be expected to be obtained either where—

- (a) a protected or statutory tenancy, within the meaning of the Rent (Northern Ireland) Order 1978<sup>(18)</sup> subsists; or
- (b) the dwelling is let on the open market.

(9) Where a relevant person is treated as possessing any income under any of paragraphs (1) to (5) and (6) and (8) the foregoing provisions of this Part shall apply for the purposes of determining the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(10) Where a relevant person is treated as possessing any earnings under paragraph (7) the foregoing provisions of this Part shall apply for the purposes of determining 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 paragraph (3) of regulation 24 (determination of net earnings of employed earners) shall not apply and his net earnings shall be determined 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 determined by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate or the basic rate and higher rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal reliefs) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate and, if appropriate, the basic rate and higher rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be determined on a pro-rata basis;
- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the 1992 Act in respect of those earnings if—
  - (i) those earnings were actual earnings; and

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<sup>(17)</sup> S.R. 1987 No. 461; the relevant amending regulations are S.R. 1988 No. 424, S.R. 1990 No. 297, S.R. 1990 No. 442, S.R. 1993 No. 145, S.R. 1993 No. 149 and S.R. 1996 No. 111

<sup>(18)</sup> S.I. 1978/1050 (N.I. 20); to which there are no relevant amendments

- (ii) the rate of any primary percentage applicable to those earnings were the rate applicable at the date of application; and
  - (c) one-half of any sum payable by the relevant person by way of a contribution towards an occupational or personal pension scheme.
- (11) In paragraph (6)—
- (a) “rates and rents” means eligible rates or rent to which regulations 9 or 10, as the case may be, of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refer, less any deductions in respect of non-dependants which fall to be made under regulation 63(19) (non-dependant deductions) of those regulations;
  - (b) “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.
- (12) Where the relevant person 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 would have been deducted had the relevant person been employed in Northern Ireland.

### **Modification in respect of child and young person**

**31.**—(1) Where the income of a child or young person, other than income consisting of any maintenance payment whether under a court order or not, determined in accordance with Chapters I to V of this Part exceeds the amount included under Schedule 1 in the determination of the relevant person’s applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any, the excess shall not be treated as income of the relevant person.

(2) Where the capital of a child or young person, if determined in accordance with Chapter VI in like manner as for the relevant person, except as provided in paragraph (5), would exceed £5,000, any income of that child or young person, other than income consisting of any maintenance payment whether under a court order or not, shall not be treated as income of the relevant person.

(3) In determining the net earnings or net profit of a child or young person there shall be disregarded (in addition to any sum which falls to be disregarded under paragraphs 13 and 14 of Schedule 2) any sum specified in paragraphs 15 and 16 of that Schedule.

(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 relevant person.

(5) There shall be treated as income any capital of a child or young person payable to him by instalments, one or more of which is outstanding at the date of the application, where the instalment or aggregate of all the instalments outstanding at that date, taken together with the amount of that child’s or young person’s other capital calculated in accordance with Chapter VI in like manner as for the relevant person, would exceed £5,000.

## **Chapter VI**

### *Capital*

#### **Determination of capital**

**32.**—(1) The capital of a relevant person to be taken into account shall, subject to paragraph (2), be the whole of his capital determined 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 determination of a relevant person’s capital under paragraph (1), any capital, where applicable, specified in Schedule 4.

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(19) Regulation 63 was amended by S.R. 1989 No. 125, S.R. 1990 No. 136, S.R. 1990 No. 345, S.R. 1991 No. 47, S.R. 1991 No. 79, S.R. 1992 No. 404, S.R. 1992 No. 549, S.R. 1993 No. 195, S.R. 1993 No. 233 and S.R. 1994 No. 81

### **Disregard of capital of child or young person**

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

### **Income treated as capital**

**34.—**(1) Any bounty derived from employment to which paragraph 6 of Schedule 2 applies and paid at intervals of at least one year shall be treated as capital.

(2) 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;
- (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.

(3) Any holiday pay which is not earnings under regulation 23(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 3, 5, 8, 14, 25 or 26 of Schedule 4, any income derived from capital over the period of 52 weeks immediately preceding the application shall be treated as capital but only from the date it is normally due to be credited to the relevant person's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the relevant person's employer shall be treated as capital except insofar as the advance or loan is spent; and thereupon the advance or loan, so far as it is spent, shall not be treated as income.

(6) Any charitable or voluntary payment which is not made or 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, the Fund, the Independent Living (Extension) Fund, the Independent Living (1993) Fund or the Independent Living Fund, shall be treated as capital.

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

**35.** Capital which a relevant person possesses in the United Kingdom shall be determined—

- (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 encumbrance 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 the application, at the price which it would have realised on that 1st July had it been purchased on the last day of that issue;
  - (ii) in any other case, at its purchase price.

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

**36.** Capital which a relevant person possesses in a country outside the United Kingdom shall be determined—

- (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;
- (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 encumbrance secured on it.

### **Notional capital**

**37.**—(1) A relevant person shall be treated as possessing capital of which he has deprived himself for the purpose of increasing the amount of grant.

(2) Except in the case of—

- (a) a discretionary trust; or
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 4; or
- (d) a personal pension scheme or retirement annuity contract,

any capital which would have become available to the relevant person upon application being made, but which has not been acquired by him, shall be treated as possessed by him but only from the date on which it could be expected to have been acquired had an application been made.

(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, the Fund, the Independent Living (Extension) Fund, the Independent Living (1993) Fund or the Independent Living Fund, made—

- (a) to a third party in respect of a single relevant person or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single person or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, eligible rates or rent to which regulation 9 or 10 of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refers, or both, of that single person or, as the case may be, of any member of that family;
- (b) to a single relevant person or a 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 person or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

(4) Where a relevant person 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 may 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 (determination 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 the company and the foregoing provisions of this Chapter shall apply for the purposes of determining that amount as if it were actual capital which he does possess.

(5) For so long as the relevant person 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 relevant person is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of the Chapter shall apply for the purposes of determining its amount as if it were actual capital which he does possess.

(7) In paragraph (3)—

- (a) “rates or rent” means eligible rates or rent to which regulations 9 or 10, as the case may be, of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refer, less any deductions in respect of non-dependants which fall to be made under regulation 63 (non-dependant deductions) of those Regulations;
- (b) “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.

### **Capital jointly held**

**38.** Except where a relevant person possesses capital which is disregarded under regulation 37(4) (notional capital) where a relevant person 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 an equal share of the whole beneficial interest therein; and the value of that equal share shall be calculated by taking the value of the whole beneficial interest calculated in accordance with the foregoing provisions of this Chapter, as though—

- (a) that interest is solely owned by the relevant person; and
- (b) in the case of a dwelling, none of the other joint owners occupies the dwelling concerned, and dividing the same by the number of persons who have a beneficial interest in the capital in question.

### **Determination of tariff income from capital**

**39.**—(1) Where the relevant person’s capital determined in accordance with this Part exceeds £5,000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £5,000.

(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 tariff income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 33 (income treated as capital).