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STATUTORY RULES OF NORTHERN IRELAND

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**2003 No. 197**

**The Housing Benefit (State Pension Credit)  
Regulations (Northern Ireland) 2003**

**PART 1  
GENERAL**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Housing Benefit (State Pension Credit) Regulations (Northern Ireland) 2003 and shall come into operation –

- (a) for the purposes of this regulation and regulation 21, on 6th April 2003;
- (b) for all other purposes, on 6th October 2003.

(2) In these Regulations –

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987(1);

“the qualifying age for state pension credit” has the meaning assigned to it by section 1(2)(b) and (6) of the State Pension Credit Act;

“the State Pension Credit Act” means the State Pension Credit Act (Northern Ireland) 2002.

(3) The Interpretation Act (Northern Ireland) 1954(2) shall apply to these Regulations as it applies to an Act of the Assembly.

(4) In Part 2 reference to any provision inserted in the Housing Benefit Regulations to a regulation of or Schedule to those Regulations is to those provisions as modified or amended by these Regulations.

**PART 2**

**HOUSING BENEFIT MODIFICATIONS**

**Housing Benefit Regulations**

2.—(1) The Housing Benefit Regulations shall have effect, except where paragraph (2) applies, in relation to any person who has attained the qualifying age for state pension credit subject to the modifications set out in this Part, Part 3 and Schedule 2.

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(1) S.R. 1987 No. 461; relevant amending Rules are S.R. 1988 Nos. 318 and 424, S.R. 1989 Nos. 125, 139 and 260, S.R. 1990 Nos. 136, 137 and 345, S.R. 1991 Nos. 47 and 176, S.R. 1992 Nos. 6, 85, 201, 404 and 549, S.R. 1993 Nos. 145, 149, 195, 233 and 549, S.R. 1994 No. 80, S.R. 1995 No. 367, S.R. 1996 Nos. 11, 115, 334, 375 and 448, S.R. 1997 Nos. 3 and 22, S.R. 1998 No. 81, S.R. 1999 Nos. 381 and 416, S.R. 2000 Nos. 38 and 71, S.R. 2001 Nos. 25, 99, 175, 176 and 215, S.R. 2002 Nos. 99, 132 and 363 and S.R. 2003 Nos. 28 and 80

(2) 1954 c. 33 (N.I.)

(2) This paragraph applies if the claimant or if the claimant has a partner, his partner, is a person on income support or an income-based jobseeker's allowance within the meaning of the Housing Benefit Regulations.

### Interpretation

3.—(1) In regulation 2 (interpretation) in paragraph (1) –

(a) for the definition of “assessment period” there shall be substituted the following definition –

““assessment period” means the period determined –

- (a) in relation to the earnings of a self-employed earner, in accordance with regulation 32 for the purpose of calculating the weekly earning of the claimant, or
- (b) in relation to any other income, in accordance with regulation 28 for the purpose of calculating the weekly income of the claimant;”.

(b) after the definition of “the Registered Homes Order”(3) there shall be inserted the following definition –

““the State Pension Credit Act” means the State Pension Credit Act (Northern Ireland) 2002;”;

(c) for the definition of “the benefit Acts” there shall be substituted the following definition –

““the benefit Acts” means the Contributions and Benefits Act, the Jobseekers (Northern Ireland) Order 1995 and the State Pension Credit Act;”;

(d) after the definition of “benefit week” there shall be inserted the following definitions –

““board and lodging accommodation” means accommodation provided to a person or, if he is a member of a family, to him and any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises;”;

(e) after the definition of “the Fund”(4) there shall be inserted the following definition –

““guarantee credit” is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act;”;

(f) after the definition of “person on income support” there shall be inserted –

““person on state pension credit” means a person in receipt of state pension credit;”;

(g) after the definition of “retirement annuity contract”(5) there shall be inserted the following definition –

““savings credit” has the meaning assigned to it by sections 1 and 3 of the State Pension Credit Act;”.

(2) In that regulation, after paragraph (4) there shall be inserted the following paragraph –

“(4A) In these Regulations references to any person in receipt of a guarantee credit, a savings credit or state pension credit includes a reference to a person who would be in receipt thereof but for regulation 13 of the State Pension Credit Regulations (Northern Ireland) 2003(6) (small amounts of state pension credit).”.

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(3) Definition of “the Registered Homes Order” was inserted by regulation 3(2) of S.R. 1993 No. 149

(4) Definition of “the Fund” was inserted by regulation 4(2)(a) of S.R. 1992 No. 201

(5) Definition of “retirement annuity contract” was inserted by regulation 3(2)(c) of S.R. 1995 No. 367

(6) S.R. 2003 No. 28

## Regulation 5

4. In regulation 5 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) in paragraph (6)(c)(ii)(7), for “or the claimant’s applicable amount includes a premium under paragraph 9, 9A, 10, 11, 13 or 14 of Schedule 2”, there shall be substituted “or the claimant is a person who has attained or whose partner has attained the qualifying age for state pension credit”.

## Persons from abroad

5. In regulation 7A(5)(8) (persons from abroad) for sub-paragraph (d) there shall be substituted the following sub-paragraph –

“(d) is on a state pension credit.”.

## Applicable amounts

6.—(1) For regulations 16, 17 and 18 (applicable amounts, polygamous marriages and patients) there shall be substituted the following regulation –

### “Applicable amounts

16.—(1) Subject to regulations 69, 70 and Schedule A1(9) (calculation of weekly amounts, rent and rate-free periods and treatment of claims for housing benefit by refugees), the applicable amount of a claimant who has attained or whose partner has attained the qualifying age for state pension credit shall be the aggregate of such of the following amounts as apply in his case –

- (a) an amount in respect of his personal allowance determined in accordance with paragraph 1 of Schedule 2A(10) (personal allowances);
  - (b) an amount in respect of any child or young person who is a member of his family determined in accordance with paragraph 2 of Schedule 2A;
  - (c) if he is a member of a family of which at least one member is a child or young person an amount determined in accordance with paragraph 3(1) of Part II of Schedule 2A (family premium);
  - (d) if he is a member of a family of which one member is a child under the age of one year an additional amount determined in accordance with paragraph 3(2) of Part II of Schedule 2A;
  - (e) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 2A.
- (2) Paragraph (3) applies in the case of –
- (a) a claimant who;
  - (b) a claimant who has a partner one or both of whom, or
  - (c) a claimant who is a member of a polygamous marriage one or more of whose members,

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(7) Paragraph (6)(c)(ii) was amended by regulation 2 of S.R. 1989 No. 260

(8) Regulation 7A was inserted by regulation 2(1) of S.R. 1994 No. 80 and paragraph (5) was substituted by regulation 5(b) of S.R. 1996 No. 11 and amended by regulation 4 of S.R. 1996 No. 334, regulation 2 of S.R. 1996 No. 375 and regulation 6(3) (a) of S.R. 2000 No. 71

(9) Schedule A1 was inserted by regulation 6 of S.R. 1996 No. 448

(10) Schedule 2A is inserted by paragraph (2) of this regulation

is or are a patient, and has or have been a patient for a period exceeding 13 weeks but not exceeding 52 weeks, or, in exceptional circumstances, is unlikely to substantially exceed 52 weeks (“long term patient”).

- (3) In the case of a claimant to whom this paragraph applies and who –
- (a) has no partner, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to 38 per cent. of the weekly rate of the basic pension for the time being specified in section 44(4) of the Contributions and Benefits Act(**11**) (the standard reduction);
  - (b) has a partner and either the claimant or his partner is a long term patient, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to 20 per cent. of the weekly rate of the basic pension for the time being specified in section 44(4) of the Contributions and Benefits Act;
  - (c) has a partner and both the claimant and his partner are long term patients, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to twice the sum of the standard reduction;
  - (d) is a member of a polygamous marriage and one or more members of the marriage are long term patients, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to the standard reduction multiplied by the number of members who are long term patients.

(4) Any calculation made for the purposes of paragraphs (2) and (3) shall be rounded to the nearest 5 pence, 2.5 pence being rounded to the next 5 pence above.

(5) In this regulation and Schedule 2A “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a young offenders centre or a juvenile justice centre) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(**12**).

(6) In Schedule 2A, “additional spouse” means a spouse of either party to the marriage who is additional to the other party to the marriage.

(7) For the purposes of calculating the period of 13 weeks referred to in paragraph (2), where a person has been maintained free of charge while undergoing medical or other treatment as an in-patient in a hospital or similar institution within the meaning of that paragraph for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been so maintained for a period equal in duration to the total of those distinct periods.”.

(2) After Schedule 2 there shall be inserted the following Schedule –

“SCHEDULE 2A

Regulation 16

APPLICABLE AMOUNTS FOR PERSONS WHO HAVE ATTAINED OR WHOSE  
PARTNER HAS ATTAINED THE QUALIFYING AGE FOR STATE PENSION CREDIT

PART I

PERSONAL ALLOWANCES

1. The amount specified in column (2) in respect of each person or couple specified in column (1) shall be the amount specified for the purposes of regulation 16 –

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(11) Section 44(4) was substituted by Article 64 of the Social Security (Northern Ireland) Order 1998 (S.I.1998/1506 (N.I. 10))

(12) S.R. 1975 No. 109

Column (1) <i>Person, couple or polygamous marriage</i>	Column (2) <i>Amount</i>
(1) Single claimant aged –	(1)
(a) under 65;	(a) £102·10;
(b) 65 or over;	(b) £116·90.
(2) Couple –	(2)
(a) both members aged under 65;	(a) £155·80;
(b) one member or both members aged 65 or over.	(b) £175·00.
(3) If the claimant is a member of a polygamous marriage and none of the members of the marriage have attained the age of 65 –	(3)
(a) for the claimant and the other party to the marriage;	(a) £155·80;
(b) for each additional spouse who is a member of the same household as the claimant.	(b) £53·70.
(4) If the claimant is a member of a polygamous marriage and one or more members are aged 65 or over –	(4)
(a) for the claimant and the other party to the marriage;	(a) £175·00;
(b) for each additional spouse who is a member of the same household as the claimant.	(b) £58·10.

2.—(1) The amounts specified in column (2) in respect of each person specified in column (1) shall, for the relevant period specified in column (1), be the amounts specified for the purposes of regulation 16(1)(b) –

Column (1) <i>Child or young person</i>	Column (2) <i>Amount</i>
Person in respect of the period –	
(a) beginning on, and including, that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday;	(a) £38·50;
(b) beginning on, and including, the first Monday in September following that person's sixteenth birthday and ending on the day preceding that person's nineteenth birthday.	(b) £38·50.

(2) In column (1) of the Table, “the first Monday in September” means the Monday which first occurs in the month of September in any year.

## PART II

### FAMILY PREMIUM

3.—(1) The amount for the purposes of regulations 16(1)(c) and (d) in respect of a family of which at least one member is a child or young person shall be £15·75.

(2) The amount specified in sub-paragraph (1) shall be increased by £10·45 where at least one child is under the age of one year and for the purposes of this sub-paragraph where that child’s first birthday does not fall on a Monday he shall be treated as under the age of one year until the first Monday after his first birthday.

## PART III

### PREMIUMS

4. The premiums specified in Part IV shall, for the purposes of regulation 16(1)(e), be applicable to a claimant who satisfies the condition specified in this Part in respect of that premium.

5.—(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit for –

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979<sup>(13)</sup> applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit, and
- (b) any period spent by a person in undertaking a course of training or instruction provided or arranged by the Department for Employment and Learning under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945<sup>(14)</sup> or section 1 of the Employment and Training Act 1950<sup>(15)</sup> or for any period during which he is in receipt of a training allowance.

(2) For the purposes of the carer premium under paragraph 9, a person shall be treated as being in receipt of a carer’s allowance under section 70<sup>(16)</sup> of the Contributions and Benefits Act by virtue of sub-paragraph (1)(a) only if, and for so long as, the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act.

### Severe Disability Premium

6.—(1) The condition is that the claimant is a severely disabled person.

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<sup>(13)</sup> S.R. 1979 No. 242

<sup>(14)</sup> 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

<sup>(15)</sup> 1950 c. 29 (N.I.); section 1(1) was substituted by Article 3 of the Employment and Training (Amendment) Order (Northern Ireland) 1988 (S.I. 1988/1087 (N.I. 10)). Section 1(2) and (3) was substituted by Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

<sup>(16)</sup> Section 70 was amended by Article 2(1) and (2)(a)(iii) and Article 3 of the Deregulation (Carer’s Allowance) Order (Northern Ireland) 2002 (S.R. 2002 No. 321)

(2) For the purposes of sub-paragraph (1), a claimant shall be treated as being a severely disabled person if, and only if –

(a) in the case of a single claimant or a claimant who is treated as having no partner in consequence of sub-paragraph (3) –

(i) he is in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act, and

(ii) subject to sub-paragraph (6), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing, and

(iii) no person is entitled to, and in receipt of, a carer's allowance in respect of caring for him;

(b) in the case of a claimant who has a partner –

(i) the claimant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act;

(ii) his partner is also in receipt of such an allowance or, if the claimant is a member of a polygamous marriage one or more of the other members of the marriage are in receipt of such an allowance, and

(iii) subject to sub-paragraph (6), the claimant has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing,

and either a person is entitled to and in receipt of a carer's allowance in respect of caring for only one member of the couple or, if he is a member of a polygamous marriage, for one or more but not all the members of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any of the members of the marriage.

(3) Where a claimant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of sub-paragraph (4), that partner shall be treated for the purposes of sub-paragraph (2) as if he were not a partner of the claimant.

(4) For the purposes of sub-paragraph (3), a person is blind if he has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a Health and Social Services Board .

(5) For the purposes of sub-paragraph (4), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(6) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii), no account shall be taken of –

(a) a person receiving attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act, or

(b) a person who is blind or is treated as blind within the meaning of sub-paragraphs (4) and (5).

(7) For the purposes of sub-paragraph (2)(b), a person shall be treated –

(a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act, if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;

- (b) as being entitled to and in receipt of a carer's allowance if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.
- (8) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b) –
  - (a) no account shall be taken of an award of a carer's allowance to the extent that payment of such an award is back-dated for a period before the date on which the award is made, and
  - (b) references to a person being in receipt of a carer's allowance shall include references to a person who would have been in receipt of that allowance but for the application of a restriction under section 6 of the Social Security Fraud Act (Northern Ireland) 2001(17) (loss of benefit provisions).

### **Enhanced disability premium**

7. The condition is that the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations under section 113(2) of the Contributions and Benefits Act or but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of the Contributions and Benefits Act in respect of a child or young person who is a member of the claimant's family.

### **Disabled child premium**

8. The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household –
- (a) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family, or
  - (b) is blind within the meaning of paragraph 6(4) or is treated as blind in accordance with paragraph 6(5).

### **Carer premium**

9.—(1) The condition is that the claimant or his partner is, or both of them are, entitled to a carer's allowance.

- (2) Where a carer premium has been awarded but –
  - (a) the person in respect of whose care the carer's allowance has been awarded dies, or
  - (b) the person in respect of whom the premium has been awarded ceases to be entitled, or ceases to be treated as entitled, to a carer's allowance,

this paragraph shall be treated as satisfied for a period of 8 weeks from the relevant date specified in sub-paragraph (3).

- (3) The relevant date for the purposes of sub-paragraph (2) is –
  - (a) the Sunday following the death of the person in respect of whose care the carer's allowance has been awarded (or beginning with the date of death if the date occurred on a Sunday);
  - (b) where head (a) does not apply, the date on which that person who was entitled to a carer's allowance ceases to be entitled to it.



(4) For the purposes of this paragraph, a person shall be treated as being entitled to and in receipt of a carer’s allowance for any period not covered by an award but in respect of which a payment is made in lieu of an award.

**Persons in receipt of concessionary payments**

10. For the purpose of determining whether a premium is applicable to a person under paragraphs 6 to 9, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

**Person in receipt of benefit**

11. For the purposes of this Part of this Schedule, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.

**PART IV**

AMOUNTS OF PREMIUM SPECIFIED IN PART III

<i>Premium</i>	<i>Amount</i>
12. —	(1)
(1) Severe Disability Premium –	
(a) where the claimant satisfies the condition in paragraph 6(2)(a);	(a) £42·95;
(b) where the claimant satisfies the condition in paragraph 6(2)(b) –	(b)
(i) in a case where there is someone in receipt of a carer’s allowance or if he or any partner satisfies that condition only by virtue of paragraph 6(7);	(i) £42·95;
(ii) in a case where there is no-one in receipt of such an allowance.	(ii) £85·90.
(2) Enhanced Disability Premium. conditions specified in paragraph 7 are satisfied.	(2) £16·60 in respect of each child or young person in respect of whom the
(3) Disabled Child Premium.	(3) £41·30 in respect of each child or young person in respect of whom the condition specified in paragraph 8 is satisfied.
(4) Carer premium.	(4) £25·10 in respect of each person who satisfies the condition specified in paragraph 9.”.

**Amendment of regulation 19**

7. In regulation 19 (calculation of income and capital of members of claimant’s family and of a polygamous marriage) –

(a) in paragraph (1), for “paragraph (2)” there shall be substituted “paragraphs (2) and (4)”;

(b) after paragraph (3) there shall be added the following paragraph –

“(4) The income and capital of a child or young person shall not be treated as the income and capital of the claimant if the claimant or his partner or, if he is a member of a polygamous marriage, any member of that marriage, has attained the qualifying age for state pension credit.”.

### **Income and capital**

8. For regulations 21 to 44, there shall be substituted the following regulations –

#### “CHAPTER II income and capital

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

21. The income and capital of –

- (a) the claimant, and
- (b) any partner of the claimant,

shall be calculated in accordance with the rules set out in this Chapter and any reference in this Part to the claimant shall apply equally to any partner of the claimant.

##### **Claimant in receipt of guarantee credit**

22. In the case of a claimant who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of his capital and income shall be disregarded.

##### **Calculation of claimant’s income and capital in savings credit only cases**

23.—(1) In determining the income and capital of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, the relevant authority shall, subject to the following provisions of this regulation, use the calculation or estimate of the claimant’s or, as the case may be, the claimant’s partner’s income and capital made by the Department for the purpose of determining that award.

(2) The Department shall provide the relevant authority with details of the calculation or estimate –

- (a) if the claimant is on housing benefit or has claimed housing benefit, within the 2 working days following the day the calculation or estimate was determined, or as soon as reasonably practicable thereafter, or
- (b) if sub-paragraph (a) does not apply, within 2 working days following the day he receives information from the relevant authority that the claimant or his partner has claimed housing benefit, or as soon as reasonably practicable thereafter.

(3) The details provided by the Department shall include the amount taken into account in that determination in respect of the net income of the person claiming state pension credit.

(4) The relevant authority shall modify the amount of the net income provided by the Department only in so far as necessary to take into account –

- (a) the amount of the savings credit payable;
- (b) in respect of any dependant children of the claimant, any of the following –
  - (i) payments of child benefit;
  - (ii) child tax credit;

- (iii) child care charges taken into account under regulation 26(1)(c);
  - (iv) payments of child special allowance under the Contributions and Benefits Act;
  - (c) the higher amount disregarded under these Regulations in respect of –
    - (i) lone parent’s earnings;
    - (ii) widowed mother’s allowance;
    - (iii) widowed parent’s allowance;
    - (iv) payments of maintenance, whether under a court order or not, which is made or due to be made by –
      - (aa) the claimant’s former partner, or the claimant’s partner’s former partner, or
      - (bb) the parent of a child or young person where that child or young person is a member of the claimant’s family except where that parent is the claimant or the claimant’s partner, or
    - (v) the disregard of the 30 hour element of working tax credit referred to in regulation 20(1)(c) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(18);
  - (d) the income and capital of any partner of the claimant who is treated as a member of the claimant’s household under regulation 15 (circumstances in which a person is to be treated as being or not being a member of the household), to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
  - (e) regulation 20 (circumstances in which income of a non-dependant is to be treated as claimant’s), if the relevant authority determines that this provision applies in the claimant’s case;
- (5) Regulations 25 to 44 shall not apply to the amount of the net income to be taken into account by the relevant authority under paragraph (1), but shall apply (so far as relevant) for the purpose of determining any modifications which fall to be made to that amount under paragraph (4).
- (6) The relevant authority shall for the purpose of determining the claimant’s entitlement of housing benefit use, except where paragraphs (7) and (8) apply, the calculation of the claimant’s capital made by the Department, and shall in particular apply the provisions of regulation 38 (capital limit) if the claimant’s capital is calculated as being in excess of £16,000.
- (7) If paragraph (8) applies, the relevant authority shall calculate the claimant’s capital in accordance with regulations 38 to 44.
- (8) This paragraph applies if –
- (a) the Department notifies the relevant authority that the claimant’s capital has been determined as being £16,000 or less;
  - (b) subsequent to that determination the claimant’s capital rises to more than £16,000, and
  - (c) the increase occurs whilst there is in force an assessed income period within the meaning of sections 6 and 9 of the State Pension Credit Act.

### **Persons who have attained the qualifying age for state pension credit**

**24.** In the case of a person who has attained or whose partner has attained the qualifying age for state pension credit and neither regulation 22 nor 23 applies in his case, his income and capital shall be calculated or estimated by the relevant authority in accordance with regulations 25 to 44.

### **Meaning of “income”**

**25.—(1)** For the purposes of these Regulations, “income” means income of any of the following descriptions –

- (a) earnings;
- (b) working tax credit and child tax credit<sup>(19)</sup>;
- (c) retirement pension income within the meaning of section 16(1) of the State Pension Credit Act<sup>(20)</sup>;
- (d) income from annuity contracts (other than retirement pension income);
- (e) income from capital, other than capital disregarded under Schedule 5ZA;
- (f) social security benefits, other than retirement pension income or any of the following benefits –
  - (i) disability living allowance;
  - (ii) attendance allowance payable under section 64<sup>(21)</sup> of the Contributions and Benefits Act;
  - (iii) an increase of disablement pension under section 104 or 105 of the Contributions and Benefits Act;
  - (iv) a payment under regulations made in exercise of the power conferred by paragraph 4(2)(b) of Part II of Schedule 8 to the Contributions and Benefits Act;
  - (v) any guardian’s allowance payable under section 77 of the Contributions and Benefits Act;
  - (vi) any increase for a dependant, other than the claimant’s partner, payable in accordance with Part IV of the Contributions and Benefits Act;
  - (vii) any social fund payment made under Part VIII of the Contributions and Benefits Act;
  - (viii) Christmas bonus payable under Part X of the Contributions and Benefits Act;
  - (ix) housing benefit;
  - (x) bereavement payment<sup>(22)</sup>;
  - (xi) statutory sick pay;
  - (xii) statutory maternity pay;
  - (xiii) statutory paternity pay payable under Part XIIZA of the Contributions and Benefits Act<sup>(23)</sup>;

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<sup>(19)</sup> See definitions inserted in regulation 2(1) by paragraph 1 of Schedule 2 to S.R. 2003 No. 1

<sup>(20)</sup> See definition inserted in section 17(1) of 2002 c. 14 (N.I.)

<sup>(21)</sup> Section 64 was amended by Article 63(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

<sup>(22)</sup> Section 36 was substituted by Article 51 of the Welfare and Reform and Pensions (Northern Ireland) Order 1999

<sup>(23)</sup> Part XIIZA was inserted by Article 5 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

- (xiv) statutory adoption pay payable under Part XIIIZB of the Contributions and Benefits Act(24);
  - (xv) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Great Britain;
  - (g) all foreign social security benefits which are similar to the social security benefits prescribed above;
  - (h) any payment made under Article 37 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(25);
  - (i) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria;
  - (j) payments under a scheme made under the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979(26);
  - (k) payments made towards the maintenance of the claimant by his spouse or former spouse or towards the maintenance of the claimant's partner by his spouse or former spouse, including payments made –
    - (i) under a court order;
    - (ii) under an agreement for maintenance, or
    - (iii) voluntarily;
  - (l) payments due from any person in respect of board and lodging accommodation provided by the claimant;
  - (m) payments consisting of royalties or other sums received as a consideration for the use of, or the right to use, any copyright, patent or trade mark;
  - (n) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982(27);
  - (o) any payment, other than a payment ordered by a court or made in settlement of a claim, made by or on behalf of a former employer of a person on account of the early retirement of that person on grounds of ill-health or disability, and
  - (p) any sum payable by way of pension out of money provided under the Civil List Act 1837(28), the Civil List Act 1937(29), the Civil List Act 1952(30), the Civil List Act 1972(31) or the Civil List Act 1975(32).
- (2) For the purposes of these Regulations, a claimant's capital, other than capital disregarded under Schedule 5ZA(33), shall be treated as if it were a weekly income –
- (a) in the case of a claimant residing permanently in accommodation to which paragraph (5) applies, of £1 for each £500 in excess of £10,000 and £1 for any excess which is not a complete £500;

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(24) Part XIIIZB was inserted by Article 6 of the Employment (Northern Ireland) Order 2002

(25) S.I. 1983/883

(26) S.I. 1979/ 925 (N.I. 9); amended by Article 22 of the [Social Security \(Northern Ireland\) Order 1985](#) (S.I. 1985 No. 1209 (N.I. 16))

(27) The Scheme is set out in the Appendix to S.I. 1982/719

(28) 1837 c. 2

(29) 1937 c. 32

(30) 1952 c. 37

(31) 1972 c. 7

(32) 1975 c. 82

(33) The Third Schedule of Schedule 2 to these Regulations has effect as Schedule 5ZA

- (b) in any other case, of £1 for each £500 in excess of £6000 and £1 for any excess which is not a complete £500.
- (3) Where the payment of any social security benefit prescribed under paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (4)) the amount to be taken into account under paragraph (1) shall be the amount before the deduction is made.
- (4) The adjustments specified in this paragraph are those made in accordance with –
- (a) the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979<sup>(34)</sup>;
  - (b) the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975<sup>(35)</sup>;
  - (c) section 30DD or section 30E of the Contributions and Benefits Act<sup>(36)</sup> (incapacity benefit: reduction for pension payments and councillor’s allowance).
- (5) This paragraph applies to accommodation provided –
- (a) in an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;
  - (b) under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(37)</sup> where –
    - (i) board is available to the claimant, and
    - (ii) the home in which the accommodation is provided is either owned or managed by a Health and Social Services Board or an HSS trust, and
    - (iii) the claimant occupies the accommodation other than on a temporary basis.
  - (c) registered under Part II of the Registered Homes Order;
  - (d) managed and provided by a body incorporated by Royal Charter or constituted by a statutory provision;
  - (e) in premises under Part III of the Registered Homes Order;
  - (f) in sub-paragraph (b)(i) “board” refers to the availability to the claimant, in the home in which his accommodation is provided, of cooked or prepared food, where the food is made available to him in consequence solely of his paying the charge for the accommodation or any charge which he is required to pay as a condition of occupying the accommodation, or both of those charges, and is made available for his consumption without any further charge to him.
- (6) For the purposes of paragraph (5), a person shall be treated as residing permanently in the accommodation –
- (a) except where sub-paragraph (b) applies, notwithstanding that he is absent from it for a period not exceeding 52 weeks;
  - (b) if it is accommodation to which paragraph (5)(b) applies –
    - (i) notwithstanding that he is absent from it for a period not exceeding 13 weeks, and
    - (ii) if he, with the agreement of the manager of the home, intends to return to it in due course.

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<sup>(34)</sup> S.R. 1979 No. 242

<sup>(35)</sup> S.R. 1975 No. 109

<sup>(36)</sup> Section 30DD was inserted by Article 60 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 and section 30E was inserted by Article 5(1) of the [Social Security \(Incapacity for Work\) \(Northern Ireland\) Order 1994](#) (S.I. 1994 No. 1898 (N.I. 12))

<sup>(37)</sup> S.I. 1972/1265 (N.I. 14)

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

**26.—(1)** Subject to regulations 29 of the Housing Benefit Regulations (disregard of changes in tax, contributions etc.), 69 and 70 (calculation of weekly amounts and rent and rate-free periods), for the purposes of section 129(1) of the Contributions and Benefits Act (conditions of entitlement to housing benefit) the income of a claimant who has reached the qualifying age for state pension credit shall be calculated on a weekly basis –

- (a) by calculating or estimating the amount which is likely to be his average weekly income in accordance with this Chapter;
  - (b) by adding to that amount the weekly income calculated under regulation 25(2);
  - (c) by then deducting any relevant child care charges to which regulation 27 (treatment of child care charges) applies from any earnings which form part of the average weekly income or, in a case where the conditions in paragraph (2) are met, from those earnings plus whichever credit specified in sub-paragraph (b) of that paragraph is appropriate, up to a maximum deduction in respect of the claimant's family of whichever of the sums specified in paragraph (3) applies in his case.
- (2) The conditions of this paragraph are that –
- (a) the claimant's earnings which form part of his average weekly income are less than the lower of either his relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in his case, and
  - (b) that claimant or, if he is a member of a couple either the claimant or his partner, is in receipt of working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) refers shall be –
- (a) where the claimant's family includes only one child in respect of whom relevant child care charges are paid, £94·50 per week;
  - (b) where the claimant's family includes more than one child in respect of whom relevant child care charges are paid, £140 per week.

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

**27.—(1)** This regulation applies where a claimant is incurring 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 are those charges for care to which paragraphs (3) and (4) apply, and shall be estimated on a weekly basis in accordance with paragraph (7).
- (3) The charges are paid by the claimant for care which is provided –
- (a) in the case of any child of the claimant's family who is not disabled, in respect of the period beginning on, and including, that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday, or
  - (b) in the case of any child of the claimant's family who is disabled, in respect of the period beginning on, and including, that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.

(4) The charges are paid for care which is provided by one or more of the care providers listed in paragraph (5) and are not paid –

- (a) in respect of the child’s compulsory education, or
- (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 14 (circumstances in which a person is treated as responsible or not responsible for another).

(5) The care to which paragraph (4) refers may be provided –

- (a) by persons registered under Article 118 of the Children Order<sup>(38)</sup> (registration of child-minders and persons providing day care);
- (b) out of school hours, by a school on school premises or by an education and library board or an HSS trust –
  - (i) for children who are not disabled in respect of the period beginning on, and including, their twelfth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday, or
  - (ii) for children who are disabled in respect of the period beginning on, and including, their twelfth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
- (c) by a child care scheme operating on Crown property where registration under Article 118 of the Children Order is not required;
- (d) in schools or establishments which are exempt from registration under Article 118 of the Children Order by virtue of Article 121(1) to (3) of that Order, or
- (e) by a child care provider approved by an organisation accredited by the Secretary of State under the scheme established by the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>(39)</sup>;

(6) In paragraphs (3) and (5)(b), “the first Monday in September” means the Monday which first occurs in the month of September in any year and in paragraph (5)(b) “education and library board” means an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986<sup>(40)</sup>.

(7) Relevant child care charges shall be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.

(8) For the purposes of paragraph (1)(c), the other member of a couple is to be treated as incapacitated where –

- (a) he is aged not less than 80;
- (b) he is aged less than 80 and –
  - (i) the additional conditions specified in paragraph 12 of Schedule 2 (additional condition for higher pensioner and disability premiums) are treated as applying in his case, and
  - (ii) he satisfies those conditions or would satisfy them but for his being treated as capable of work by virtue of a determination made in accordance with

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<sup>(38)</sup> S.I. 1995/755 (N.I. 2)

<sup>(39)</sup> S.I. 1999/3110

<sup>(40)</sup> S.I. 1986/594 (N.I. 3)



- regulations made under section 167E of the Contributions and Benefits Act(41) (incapacity for work: disqualification, etc.);
- (c) the claimant 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 XIII A of the Contributions and Benefits Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any 2 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 –
- (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate specified in paragraph 2 of Part 1 of Schedule 4 to the Contributions and Benefits Act(42);
  - (ii) attendance allowance under section 64 of the Contributions and Benefits Act;
  - (iii) severe disablement allowance under section 68 of the Contributions and Benefits Act;
  - (iv) disability living allowance under section 71(43) of the Contributions and Benefits Act;
  - (v) increase of disablement pension under section 104 of the Contributions and Benefits Act;
  - (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 16(5) (patients);
- (f) sub-paragraph (c) or (d) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Great Britain, or
- (g) he has an invalid carriage or other vehicle provided to him under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 or provided by the Secretary of State under section 5(2)(a) of, and Schedule 2 to, the National Health Service Act 1977(44) or under section 46 of the National Health Service (Scotland) Act 1978(45).
- (9) For the purposes of paragraph (8), once paragraph (8)(c) applies to the claimant, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.
- (10) For the purposes of paragraphs (3) and (5)(b), a person is disabled if he is a person –

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(41) Part XIII A which includes section 167E was inserted by Articles 7 and 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(42) Paragraph 2 of Part I of Schedule 4 was substituted by Article 4(2) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(43) Section 71 was amended by Article 64(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(44) 1977 c. 49

(45) 1978 c. 29

- (a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;
- (b) who is identified as a person who is blind in pursuance of arrangements under section 1(1) of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978<sup>(46)</sup>, or
- (c) who ceased to be so identified as blind within the 28 weeks immediately preceding the date of claim.

(11) For the purposes of paragraph (1) a person on maternity leave, paternity leave or adoption leave shall be treated as if he is engaged in remunerative work for the period specified in paragraph (12) (“the relevant period”) provided that –

- (a) in the week before the period of maternity leave, paternity leave or adoption leave began he was in remunerative work;
- (b) the claimant incurred relevant child care charges within the meaning of paragraph (2) in that week, and
- (c) he is entitled to maternity allowance under section 35 of the Contributions and Benefits Act, statutory maternity pay under section 160 of that Act, statutory paternity pay under section 167ZA or 167XB of that Act<sup>(47)</sup> statutory adoption pay under section 167ZL of that Act<sup>(48)</sup> or qualifying support.

(12) For the purposes of paragraph (11) the relevant period shall begin on and include the day on which the person’s maternity leave, paternity leave or adoption leave commences and shall end on –

- (a) the date that leave ends;
- (b) if no tax credit is in payment on the date that entitlement to maternity allowance, statutory maternity pay, statutory paternity pay, statutory adoption pay or qualifying support ends, the date that entitlement ends, or
- (c) if a tax credit is in payment on the date that entitlement to maternity allowance, statutory maternity pay, statutory paternity pay, statutory adoption pay or qualifying support ends, the date that entitlement to that award of tax credit ends,

whichever shall occur first.

(13) In –

- (a) paragraphs (11) and (12) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support (General) Regulations (Northern Ireland) 1987<sup>(49)</sup> (paternity leave);
- (b) paragraph (12) “tax credit” means either working families’ tax credit or a disabled person’s tax credit provided that a child care tax credit under either regulation 46(1)(c) of the Family Credit (General) Regulations (Northern Ireland) 1987<sup>(50)</sup> (determination of appropriate maximum working families’ tax credit) or, as the case may be, regulation 51(1)(aa) of the Disability Working Allowance (General) Regulations (Northern Ireland) 1992<sup>(51)</sup> (determination of appropriate maximum disabled person’s tax credit) forms part of the entitlement to either of those credits.

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<sup>(46)</sup> 1978 c. 53

<sup>(47)</sup> Section 167ZA and 167ZB were inserted by Article 5 of the Employment (Northern Ireland) Order 2002

<sup>(48)</sup> Section 167ZL was inserted by Article 6 of the Employment (Northern Ireland) Order 2002

<sup>(49)</sup> Paragraph 14B was inserted by regulation 2(5) of S.R. 2002 No. 323

<sup>(50)</sup> S.R. 1987 No. 463; paragraph (1) was substituted by regulation 6(2) of S.I. 2001/366

<sup>(51)</sup> S.R. 1992 No. 78; paragraph (1) was substituted by regulation 6(2) of S.I. 2001/366

(14) Where paragraph (11) applies to a person on maternity leave, paternity leave or adoption leave any child care charges in respect of the child to whom such leave relates shall not be treated as relevant child care charges for the purposes of this regulation and regulation 26 (calculation of income on a weekly basis).

### **Calculation of weekly income**

**28.**—(1) Except where paragraphs (2) and (4) apply, for the purposes of calculating the weekly income of the claimant, where the period in respect of which a payment is made –

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

(2) Where –

- (a) the claimant’s regular pattern of work is such that he does not work the same hours every week, or
- (b) the amount of the claimant’s income fluctuates and has changed more than once, the weekly amount of that claimant’s income shall be determined –

- (i) if, in a case to which sub-paragraph (a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences), or

- (ii) in any other case, on the basis of –

- (aa) the last 2 payments if those payments are one month or more apart;
- (bb) the last 4 payments if the last 2 payments are less than one month apart, or
- (cc) calculating or estimating such other payments as may, in the particular circumstances of the case, enable the claimant’s average weekly income to be determined more accurately.

(3) For the purposes of paragraph (2)(b) the last payments are the last payments before the date the claim was made or treated as made or, if there is a subsequent supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(52), the last payments before the date of the supersession.

- (4) If a claimant is entitled to receive a payment to which paragraph (5) applies, the amount of that payment shall be treated as if made in respect of a period of a year.
- (5) This paragraph applies to –
- (a) royalties or other sums payable as a consideration for the use of, or the right to use, any copyright, patent or trade mark;
  - (b) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982, and
  - (c) any payment which is made on an occasional basis.
- (6) The period under which any benefit under the benefit Acts is to be taken into account shall be the period in respect of which that benefit is payable.
- (7) Where payments are made in a currency other than Sterling, the value of the payment shall be determined by taking the Sterling equivalent on the date the payment is made.
- (8) The sums specified in Schedule 3A(53) shall be disregarded in calculating –
- (a) the claimant's earnings, and
  - (b) any amount to which paragraph (5) applies if the claimant or his partner is the first owner of the copyright, patent or trade mark, or the author of the book registered under the Public Lending Right Scheme 1982.
- (9) Income specified in Schedule 4A(54) is to be disregarded in the calculation of a claimant's income.
- (10) Schedule 5ZA shall have effect so that –
- (a) the capital specified in Part I shall be disregarded for the purpose of determining a claimant's income, and
  - (b) the capital specified in Part II shall be disregarded for the purpose of determining a claimant's income under regulation 25(2).
- (11) In the case of any income taken into account for the purpose of calculating a persons income, there shall be disregarded any amount payable by way of tax.

**Disregard of changes in tax, contributions etc.**

- 29.** In calculating the claimant's income, the appropriate authority may disregard any legislative change –
- (a) in the basic or other rates of income tax;
  - (b) in the amount of any personal tax relief;
  - (c) in the rates of social security contributions payable under the Contributions and Benefits Act or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of that Act (small earnings exception in relation to Class 2 contributions);
  - (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the Act, and
  - (e) in the maximum rate of child tax credit or working tax credit,

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(53) The First Schedule of Schedule 2 to these Regulations has effect as Schedule 3A

(54) The Second Schedule of Schedule 2 to these Regulations has effect as Schedule 4A

for a period not exceeding 30 benefit weeks beginning with the benefit week immediately following the date from which the change is effective.

## EMPLOYED EARNERS

### Earnings of employed earners

**30.**—(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 claimant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay;
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant’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 claimant’s employer in respect of –
  - (i) travelling expenses incurred by the claimant between his home and place of employment;
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant’s absence from home;
- (g) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person’s earnings in accordance with Part V of Schedule 3 to the Social Security (Contributions) Regulations 2001<sup>(55)</sup> (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions);
- (h) statutory sick pay and statutory maternity pay payable by the employer under the Contributions and Benefits Act;
- (i) statutory paternity pay payable under Part XIIZA of the Contributions and Benefits Act<sup>(56)</sup>;
- (j) statutory adoption pay payable under Part XIIZB of the Contributions and Benefits Act<sup>(57)</sup>;
- (k) any sums payable under a contract of service –
  - (i) for incapacity for work due to sickness or injury, or
  - (ii) by reason of pregnancy or confinement;
- (l) 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 (h) to (j) apply.

(2) Earnings shall not include –

- (a) subject to paragraph (3), any payment in kind;

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<sup>(55)</sup> S.I. 2001/1004; relevant amending Instruments are S.I. 2001/2412 and S.I. 2002/307

<sup>(56)</sup> Part XIIZA was inserted by Article 5 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

<sup>(57)</sup> Part XIIZB was inserted by Article 6 of the Employment (Northern Ireland) Order 2002

- (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;
  - (d) any payment of compensation made pursuant to an award by an employment tribunal in respect of unfair dismissal or unlawful discrimination.
- (3) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1)(g).

### **Calculation of net earnings of employed earners**

**31.—(1)** For the purposes of regulation 26 of the Housing Benefit Regulations (calculation of income on a weekly basis), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to regulation 28(5) and Schedule 3A, be his net earnings.

(2) For the purposes of paragraph (1) net earnings shall, except in relation to any payment to which regulation 28(5) refers, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less –

- (a) any amount deducted from those earnings by way of –
  - (i) income tax;
  - (ii) primary Class 1 contributions under the Contributions and Benefits Act;
- (b) one half of any sum paid by the claimant 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 claimant, and
- (d) where those earnings include a payment which is payable under any statute of the Parliament of the United Kingdom extending solely to Great Britain and which corresponds to statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay any amount deducted from those earnings by way of any contributions which are payable under any statute of the Parliament of the United Kingdom extending solely to Great Britain and which correspond to primary Class 1 contributions under the Contributions and Benefits Act.

(3) In this regulation, “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.

(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 earnings of a claimant are determined under regulation 28(2)(b) (calculation of weekly income), his net earnings shall be calculated by taking into account those earnings over the assessment period, less –

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of tax in the year of assessment in which the claim was made less

only the personal relief to which the claimant is entitled under sections 257(1), 257A(1) and 259 of the Income and Corporation Taxes Act 1988<sup>(58)</sup> (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 of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated 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 Contributions and Benefits Act in respect of those earnings if such contributions were payable, and
- (c) one half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

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

## SELF-EMPLOYED EARNERS

### Calculation of earnings of self-employed earners

**32.**—(1) Where a claimant’s earnings consist of earnings from employment as a self-employed earner, the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment –

- (a) over a period of one year, or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period (“computation period”) as may, in the particular case, enable the weekly amount of his earnings to be determined more accurately.

(2) For the purposes of determining the weekly amount of earnings of a claimant to whom paragraph (1)(b) applies, his earnings over the computation period shall be divided by the number equal to the number of days in that period and multiplying the quotient by 7.

(3) The period over which the weekly amount of a claimant’s earnings is calculated in accordance with this regulation shall be his assessment period.

### Earnings of self-employed earners

**33.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance payable pursuant to provision or arrangements made by the Department for Employment and Learning under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945<sup>(59)</sup> or under section 1 of the Employment and Training Act (Northern Ireland) 1950<sup>(60)</sup> or any equivalent allowance payable under Republic of Ireland legislation to the claimant for the purpose of assisting him in carrying on his business unless at the date of claim the allowance has been terminated.

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<sup>(58)</sup> 1988 c. 1; sections 257 and 257A were substituted by the Finance Act 1988 (c. 39), section 33

<sup>(59)</sup> 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

<sup>(60)</sup> 1950 c. 29 (N.I.); section 1(1) was substituted by Article 3 of the Employment and Training (Amendment) Order (Northern Ireland) 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

- (2) “Earnings” in the case of employment as a self-employed earner does not include –
- (a) where a claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation for which payment is made, those payments;
  - (b) any payment made by an authority to a claimant who is caring for a child by virtue of arrangements made under Article 27(2)(a) of the Children Order (provision of accommodation and maintenance by an authority for children whom it is looking after), or
  - (c) any payment made by a voluntary organisation under Article 75(1)(a) of the Children Order (provision of accommodation by voluntary organisations);
  - (d) any payment made to the claimant or his partner for a person (“the person concerned”) who is not normally a member of the claimant’s household but is temporarily in his care by –
    - (i) an authority;
    - (ii) a voluntary organisation, or
    - (iii) the person concerned pursuant to Article 36(7) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(61)</sup>;
  - (e) any sports award.
- (3) In paragraphs 2(b) to (d)(i) “an authority” has the same meaning as in Article 2 of the Children Order.

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

**34.—(1)** For the purposes of regulation 26 of the Housing Benefit Regulations (calculation of income on a weekly basis), the earnings of a claimant to be taken into account shall be –

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
  - (b) in the case of a self-employed earner whose employment is carried on in partnership, 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 Contributions and Benefits Act calculated in accordance with regulation 35 (deduction of tax and contributions for self-employed earners), and
    - (ii) one half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.
- (2) For the purposes of paragraph (1)(a), the net profit of the employment shall, except where paragraph (8) applies, be calculated by taking into account the earnings of the employment over the assessment period less –
- (a) subject to paragraphs (4) 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 Contributions and Benefits Act,

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<sup>(61)</sup> Article 36(7) was substituted by Article 25 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1))



calculated in accordance with regulation 35, and

- (c) one half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

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

(4) Subject to paragraph (5), no deduction shall be made under paragraph (2)(a) or (3), in respect of –

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

(5) A deduction shall be made under paragraph (2)(a) or (3) in respect of the repayment of capital on any loan used for –

- (a) the replacement in the course of business of equipment or machinery;
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair, and
- (c) the purchase of land under the Northern Ireland Land Act 1925(62).

(6) The relevant authority shall refuse to make a deduction in respect of any expenses under paragraph (2)(a) or (3) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.

(7) For the avoidance of doubt –

- (a) a deduction shall not be made under paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made thereunder in respect of –
  - (i) the excess of any value added tax paid over value added tax received in the assessment period;
  - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
  - (iii) any payment of interest on a loan taken out for the purposes of the employment.

(8) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be one third of the earnings of that employment, less –

- (a) an amount in respect of –
  - (i) income tax, and
  - (ii) social security contributions payable under the Contributions and Benefits Act,

calculated in accordance with regulation 35, and

- (b) one half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

(9) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

(10) 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.

(11) In this regulation, “qualifying premium” means any premium which is payable periodically in respect of a retirement annuity contract or a personal pension scheme and is so payable on or after the date of claim.

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

**35.**—(1) The amount to be deducted in respect of income tax under regulation 34(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate of tax in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), and 259 of the Income and Corporation Taxes Act 1988 as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal reliefs 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 34(1)(b)(i), (2)(b)(ii) or (8)(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, 11(3) of the Contributions and Benefits Act at the rate applicable at the date of claim except where the claimant’s chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro-rata, and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the Contributions and Benefits Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but if the assessment period is less than a year those limits shall be 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 (2)(a) or, as the case may be, (3) of regulation 34;
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

## OTHER INCOME

### Notional income

**36.**—(1) A claimant who has attained or whose partner has attained the qualifying age for state pension credit shall be treated as possessing –

- (a) the amount of any retirement pension income –
  - (i) for which no claim has been made, and
  - (ii) to which he might expect to be entitled if a claim for it were made;
- (b) income from an occupational pension scheme which the claimant elected to defer.

(2) Where a person, aged not less than 60, is a person entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and –

- (a) 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.

(3) The amount of any income foregone in a case to which either paragraph (2)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the relevant authority which shall take account of information provided by the pension fund holder in accordance with regulation 73(5)(**63**) (evidence and information).

(4) The amount of any income foregone in a case to which either paragraph (2)(a)(iii) or (2)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant scheme or retirement annuity contract been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (3).

(5) In paragraph (2), “money purchase benefits” has the meaning it has in the Pensions Scheme (Northern Ireland) Act 1993(**64**).

(6) A person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit.

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(63) Regulation 73(5) was amended by regulation 3(2) of and Schedule 1 to [S.R. 2001 No. 215](#)

(64) [1993 c. 49](#); see section 176(1) of that Act

(7) Where a claimant is in receipt of any benefit (other than housing benefit) under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the relevant authority shall treat the claimant as possessing such benefit at the altered rate –

- (a) in a case in which the claimant's weekly amount of eligible rent or, as the case may be, rates falls to be calculated in accordance with regulation 69(2)(b) or, as the case may be, (3)(b) (calculation of weekly amounts), from 1st April in that year;
- (b) in any other case, from the first Monday in April in that year,

to the date on which the altered rate is to take effect.

### **Income paid to third parties**

**37.**—(1) Any payment of income, other than a payment specified in paragraph (2), to a third party in respect of the claimant shall be treated as possessed by the claimant.

(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where –

- (a) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980<sup>(65)</sup>;
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors, and
- (c) the person referred to in sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

## **CAPITAL**

### **Capital limit**

**38.** For the purposes of section 130(1) of the Contributions and Benefits Act as it applies to housing benefit (no entitlement to benefit if capital exceeds a prescribed amount), the prescribed amount is £16,000.

### **Calculation of capital**

**39.**—(1) For the purposes of Part VII of the Contributions and Benefits Act as it applies to housing benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part.

(2) There shall be disregarded from the calculation of the claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 5ZA<sup>(66)</sup>.

(3) A claimant's capital shall be treated as including any payment made to him by way of arrears of –

- (a) child tax credit;
- (b) working tax credit;
- (c) state pension credit,

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<sup>(65)</sup> 1980 c. 46

<sup>(66)</sup> The Third Schedule of Schedule 2 to these Regulations has effect as Schedule 5ZA

if the payment was made in respect of a period for the whole or part of which housing benefit was paid before those arrears were paid.

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

- 40.** Capital which a claimant possesses in the United Kingdom shall be calculated –
- (a) except in a case to which sub-paragraph (b) applies, at its current market or surrender value less –
    - (i) where there would be expenses attributable to sale, 10 per cent., and
    - (ii) the amount of any incumbrance secured on it;
  - (b) in the case of an Ulster or National Savings Certificate –
    - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date on which the claim is made or treated as made, or the date of any subsequent review, 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.

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

- 41.** Capital which a claimant possesses in a country outside the United Kingdom shall be calculated –
- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
  - (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

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

#### **Notional capital**

**42.—(1)** A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit except to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 43 (diminishing notional capital rule).

(2) Without prejudice to the generality of paragraph (1), a person who disposes of a capital resource shall be regarded as –

- (a) depriving himself of it if the disposal was by way of gift to a third party;
- (b) not depriving himself of it if the disposal was for the purpose of –
  - (i) reducing or paying a debt owed by the claimant, or
  - (ii) purchasing goods or services if the expenditure was reasonable in the circumstances of the claimant's case.

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

- (a) the value of his holding in that company shall, notwithstanding regulation 39 (calculation of capital), be disregarded, and

(b) he shall, subject to paragraph (4), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(4) For so long as a claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (3) shall be disregarded.

(5) Where under this regulation a person is treated as possessing capital, the amount of that capital shall be calculated in accordance with the provisions of this Part as if it were actual capital which he does possess.

### **Diminishing notional capital rule**

**43.—**(1) Where a claimant is treated as possessing capital under regulation 42(1) (notional capital), the amount which he is treated as possessing –

- (a) in the case of a week that is subsequent to –
- (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied, or
  - (ii) a week which follows that relevant week and which satisfies those conditions,

shall be reduced by an amount determined under paragraph (3);

- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where –
- (i) that week is a week subsequent to the relevant week, and
  - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied,

shall be reduced by the amount determined under paragraph (4).

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

- (a) he is in receipt of housing benefit, and
- (b) but for regulation 42(1), he would have received an additional amount of housing benefit in that week.

(3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to the aggregate of –

- (a) the additional amount to which paragraph (2)(b) refers;
- (b) where the claimant has also claimed state pension credit, the amount of any state pension credit or any additional amount of state pension credit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations (Northern Ireland) 2003(67) (notional capital);
- (c) where the claimant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application

of regulation 113 of the Jobseeker's Allowance Regulations (Northern Ireland) 1996<sup>(68)</sup> (notional capital).

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to housing benefit in the relevant week but for regulation 42(1), and in such a case the amount of the reduction shall be equal to the aggregate of –

- (a) the amount of housing benefit to which the claimant would have been entitled in the relevant week but for regulation 42(1) and, for the purposes of this sub-paragraph, if the relevant week is a week to which regulation 69(5)(a) refers (calculation of weekly amounts), that amount shall be determined by dividing the amount of housing benefit to which he would have been so entitled by the number of days in that week for which he was liable to make payments in respect of the dwelling he occupies as his home and multiplying the quotient so obtained by 7;
- (b) if the claimant would, but for regulation 21 of the State Pension Credit Regulations (Northern Ireland) 2003, have been entitled to state pension credit in respect of the benefit week, within the meaning of regulation 1(2) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the state pension credit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
- (c) if the claimant would, but for regulation 113 of the Jobseeker's Allowance Regulations (Northern Ireland) 1996, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(2) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income-based jobseeker's allowance to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.

(5) The amount determined under paragraph (4) shall be re-determined under that paragraph if the claimant makes a further claim for housing benefit and the conditions in paragraph (6) are satisfied, and in such a case –

- (a) paragraph (4) shall apply as if for “relevant week” there was substituted “relevant subsequent week”, and
  - (b) subject to paragraph (7), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.
- (6) The conditions are that –
- (a) a further claim is made 26 or more weeks after –
    - (i) the date on which the claimant made a claim for housing benefit in respect of which he was first treated as possessing the capital in question under regulation 42(1);

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<sup>(68)</sup> S.R. 1996 No. 198; relevant amending regulations are S.R. 1997 No. 412, S.R. 1998 No. 326, S.R. 1999 No. 391, S.R. 2000 No. 350, S.R. 2001 No. 151 and S.R. 2002 No. 128

- (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the date on which he last made a claim for housing benefit which resulted in the weekly amount being re-determined, or
  - (iii) the date on which he last ceased to be entitled to housing benefit, whichever last occurred, and
  - (b) the claimant would have been entitled to housing benefit but for regulation 42(1).
- (7) The amount as re-determined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.
- (8) For the purposes of this regulation –
- “part-week” in paragraph (4)(b) and (c) means –
- (a) a period of less than a week which is the whole period for which state pension credit, or, as the case may be, an income-based jobseeker’s allowance, is payable, and
  - (b) any other period of less than a week for which either of those benefits is payable;
- “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 42(1) –
- (a) was first taken into account for the purpose of determining his entitlement to housing benefit, or
  - (b) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to housing benefit on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, housing benefit;
- and where more than one benefit week is identified by reference to paragraphs (a) and (b), the later or latest such benefit week;
- “relevant subsequent week” means the benefit week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

### **Capital jointly held**

44.—(1) Where a claimant and one or more persons are beneficially entitled in possession to any capital asset other than a capital asset disregarded under regulation 42(3), they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Chapter shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

(2) Any premises or land not wholly owned by the claimant shall be disregarded for such period as is reasonable in the circumstances to enable the collection of such information as is necessary to determine the treatment of capital in accordance with paragraph (1).”.

### **Provisions which do not apply**

9. The following provisions of the Housing Benefit Regulations shall not apply to a claimant who has attained, or whose partner has attained, the qualifying age for state pension credit –

- (a) regulations 46 to 60 (students);
- (b) regulations 66 and 67 (benefit period).



### **Continuing payments where state pension credit claimed**

10.—(1) After regulation 62A(69) (extended payments), there shall be inserted the following regulation –

#### **“Continuing payments where state pension credit claimed**

**62B.**—(1) This regulation applies where –

- (a) the claimant is entitled to housing benefit;
- (b) paragraph (2) is satisfied, and
- (c) either –
  - (i) the claimant has attained the qualifying age for state pension credit or, if his entitlement to income-based jobseeker’s allowance continued beyond that age, has attained the age of 65, or
  - (ii) the claimant’s partner has actually claimed state pension credit.

(2) This regulation is only satisfied if the Department has certified to the relevant authority that the claimant’s partner has actually claimed state pension credit or that –

- (a) the claimant’s award of –
  - (i) income support has terminated because the claimant has attained the qualifying age for state pension credit, or
  - (ii) income-based jobseeker’s allowance has terminated because the claimant has attained the qualifying age for state pension credit or the age of 65, and
- (b) the claimant has claimed or is treated as having claimed or is required to make a claim for state pension credit.

(3) In a case to which this regulation applies, housing benefit shall continue to be paid for the period of 4 weeks beginning on the day following the day the claimant’s entitlement to income support or, as the case may be, income-based jobseeker’s allowance, ceased, if and for so long as the claimant otherwise satisfies the conditions for entitlement to housing benefit.

(4) Throughout the period of 4 weeks specified in paragraph (3) –

- (a) the whole of the income and capital of the claimant shall be disregarded;
- (b) subject to paragraph (5), the appropriate maximum housing benefit of the claimant shall be that which was applicable in his case immediately before that period commenced.

(5) The appropriate maximum housing benefit shall be calculated in accordance with regulation 61(70) (maximum housing benefit) if, since the date it was last calculated –

- (a) the claimant’s rent has increased, or
- (b) a change in the deduction under regulation 63(71) (non-dependant deductions) falls to be made.”.

### **Amendment of regulation 63**

11. In regulation 63 (non-dependant deductions) –

(69) Regulation 62A was inserted by regulation 3 of S.R. 1996 No. 115 and amended by regulation 4(2)(a), (b) and (c) of S.R. 1999 No. 381, regulation 3(2) to (7) of S.R. 2001 No. 99 and Schedule 1 to S.R. 2001 No. 215

(70) Regulation 61 was amended by regulation 7 of S.R. 1990 No. 345, regulation 6 of 1992 No. 549 and regulation 10(1)(b) of S.R. 2001 No. 215

(71) Regulation 63 was amended by S.R. 1989 No. 125, S.R. 1990 Nos. 136 and 345, S.R. 1992 Nos. 85, 404 and 549, S.R. 1993 Nos. 145, 195, 233 and 549, S.R. 1996 No. 334, S.R. 1997 No. 3, S.R. 1998 No. 81, S. R. 2000 No. 38 and S.R.2002 No. 99

- (a) in paragraph (1), for sub-paragraph (b)(72), there shall be substituted –
  - “(b) in respect of a non-dependant who is engaged in remunerative work and in receipt of state pension credit –
    - (i) in calculating the amount of a rent rebate or allowance, £7·40 per week,
    - (ii) in calculating the amount of a rate rebate, £2·30 per week;
  - (c) in respect of a non-dependant aged 18 or over to whom neither sub-paragraph (a) nor sub-paragraph (b) applies –
    - (i) in calculating the amount of a rent rebate or allowance, £7·40 per week,
    - (ii) in calculating the amount of a rate rebate, £2·30 per week;”;
- (b) in paragraph (7) after sub-paragraph (d)(73), there shall be inserted the following sub-paragraph –
  - “(dd) he is a full-time student and the claimant or his partner has attained the age of 65, or”.

## PART 3

### APPLICATION OF SCHEDULE 2

#### Application of Schedule 2

**12.**—(1) Schedule 2 to these Regulations shall have effect in relation to housing benefit.

(2) The provisions of Schedule 2 apply only in the case of a person who has attained or whose partner has attained the qualifying age for state pension credit, except in the case of a person to whom paragraph (3) applies.

(3) This paragraph applies where the claimant or, if the claimant has a partner, his partner, is a person on income support or on an income-based jobseeker’s allowance within the meaning of the Housing Benefit Regulations.

## PART IV

### CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

#### Date on which change of circumstances is to take effect

**13.**—(1) Regulation 68 of the Housing Benefit Regulations (date on which change of circumstances is to take effect) shall be amended in accordance with paragraphs (2) and (3).

(2) In paragraph (1)(74) for “and subject to paragraphs (1A)(75) to (8)” there shall be substituted “and subject to paragraphs (3) to (12)”.

(3) After paragraph (8) there shall be added the following paragraphs –

(9) Paragraph (10) applies if –

- (a) the claimant or his partner has attained the age of 65, and

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(72) The amounts in sub-paragraph (b) were substituted by Article 19(4) of [S.R. 2002 No. 99](#)

(73) Sub-paragraph (d) was added by regulation 8 of [S.R. 1990 No. 345](#)

(74) Paragraph (1) was amended by regulation 8(a)(i) of [S.R. 2001 No. 25](#) and regulation 6(a) of [S.R. 1999 No. 416](#)

(75) Paragraph (1A) was inserted by regulation 2(b) of [S.R. 2003 No. 189](#)

- (b) since the date in respect of which the claimant's entitlement to housing benefit first began or, if later, the anniversary date –
  - (i) a non-dependant took up residence in the claimant's dwelling, or
  - (ii) the income of a non-dependant increased so that the amount of the deduction which falls to be made under regulation 63 (non-dependant deductions) increased.
- (10) Where this paragraph applies, the change of circumstances shall take effect from the next anniversary date following the change specified in paragraph (9)(b).
- (11) In paragraphs (9) and (10) but subject to paragraph (12), "anniversary date" means –
  - (a) in the case of a person whose entitlement to housing benefit began before 6th October 2003, the anniversary of the date of the last decision made by the relevant authority before 6th October 2003 awarding the claimant housing benefit;
  - (b) in the case of a person who claimed housing benefit on or after 6th October 2003 but before 6th October 2004 and whose award took effect from 6th October 2003, the anniversary of the date the decision on that claim was made by the relevant authority, or
  - (c) in any other case, the anniversary of the date in respect of which the claimant's entitlement to housing benefit first began.
- (12) If in any particular case the date determined under sub-paragraphs (a) to (c) is not the first day of a benefit week, the anniversary date in that case shall be the first day of the next benefit week to commence after the date determined under those paragraphs.
- (4) After regulation 68A(76) (date of change of circumstances following decision as to whether a person took part in a work-focused interview) there shall be inserted the following regulation –

**“Change of circumstances where state pension credit payable**

**68B.**—(1) Paragraphs (2) to (8) apply where –

- (a) the claimant is also on state pension credit;
- (b) the amount of state pension credit awarded to him is changed in consequence of a change in the claimant's circumstances or the correction of an official error, and
- (c) the change in the amount of state pension credit payable to the claimant results in a change in the rate of housing benefit payable to the claimant.

(2) Where the change of circumstance is that an increase in the amount of state pension credit payable to the claimant results in an increase in the rate at which housing benefit is payable to him, the change shall take effect from the first day of the benefit week in which state pension credit becomes payable at the increased rate.

(3) Where the change of circumstance is that the claimant's state pension credit is reduced and in consequence the rate of housing benefit payable to the claimant reduces –

- (a) in a case where the claimant's state pension credit is reduced because the claimant failed to notify the Department timeously of the change of circumstances, the change shall take effect from the first day of the benefit week from which state pension credit was reduced, or
- (b) in any other case, the change shall take effect from the first day of the benefit week next following the date on which the relevant authority receives notification from the Department of the change.

(4) Where the change of circumstance is that –

- (a) state pension credit is reduced, and

- (b) in consequence of the change, the rate of housing benefit payable to the claimant is increased,

the change shall take effect from the first day of the benefit week in which state pension credit becomes payable at the reduced rate.

(5) Where the change of circumstance is that an award of state pension credit has been made to the claimant or his partner and this has resulted in a decrease in the rate of housing benefit payable to the claimant, the change shall take effect from the first day of the benefit week next following the date on which the relevant authority receives notification from the Department of the award.

(6) Where the change of circumstances is that a guarantee credit has been awarded to the claimant or his partner and this has resulted in a decrease in the rate of housing benefit payable to the claimant, the change shall take effect from the first day of the benefit week next following the date in respect of which the guarantee credit is first payable.

(7) Where a change of circumstances would, but for this paragraph, take effect under the preceding provisions of this regulation within the 4 week period specified in regulation 62B(77) (continuing payments where state pension credit claimed), that change shall take effect on the first day of the first benefit week to commence after the expiry of the 4 week period.

(8) In paragraph (1) “official error” has the meaning it has in the Decisions and Appeals Regulations by virtue of regulation 1(2) of those Regulations.”.

#### **Time claims are made or treated as made**

**14.** In regulation 72 of the Housing Benefit Regulations (time and manner in which claims are to be made) –

- (a) in paragraph (5)(78) –

(i) in sub-paragraph (a), after the words “income support” wherever they occur, there shall be inserted “, state pension credit which comprises a guarantee credit”;

- (ii) after sub-paragraph (aa)(79) there shall be inserted the following sub-paragraph –

“(aaa) in a case where the claimant or his partner claimed state pension credit and either there was no entitlement to state pension credit or there was entitlement only to a savings credit, the date on which the claim is received at the appropriate office or the designated office whichever is the earlier.”;

- (iii) in sub-paragraph (bb)(80) after “income support” there shall be inserted “, in receipt of a guaranteed credit”;

- (b) after paragraph (10) there shall be inserted the following paragraph –

“(10A) In the case of a person who has attained, or whose partner has attained, the age of 59 years and 35 weeks, paragraph (10) shall apply as if for the reference to the thirteenth benefit week, there was substituted a reference to the seventeenth benefit week.”.

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(77) Regulations 62B was inserted by regulation 10 of these Regulations

(78) Paragraph (5) was amended by regulation 4(4)(a) of S.R. 1990 No. 137, regulation 9(a) of S.R. 1991 No. 47, regulation 3(a) of S.R. 1991 No. 176 and regulation 13(b) of S.R. 1996 No. 334

(79) Sub-paragraph (aa) was added by regulation 3 of S.R. 2003 No. 80

(80) Sub-paragraph (bb) was inserted by regulation 9(a) of S.R. 1991 No. 47 and amended by regulation 13(b)(ii)(c) of S.R. 1996 No. 334

## Notification of change of circumstances

15. In regulation 75 of the Housing Benefit Regulations (duty to notify change of circumstances)

- (a) in paragraph (1)(**81**) for “(2) and (4)” there shall be substituted “(2), (4) to (6)”;
- (b) after paragraph (4)(**82**) there shall be added the following paragraphs –
  - “(5) A person on housing benefit who is also on state pension credit must report –
    - (a) changes to his tenancy, but not changes in the amount of rent payable to the Executive;
    - (b) changes affecting the residence or income of any non-dependant normally residing with the claimant or with whom the claimant normally resides;
    - (c) any absence from the dwelling which exceeds or is likely to exceed 13 weeks.
  - (6) In addition to the changes required to be reported under paragraph (5), a person whose state pension credit comprises only a savings credit must also report –
    - (a) changes affecting a child living with him which may result in a change in the amount of housing benefit payable in his case, but not changes in the age of the child;
    - (b) changes affecting child tax credit, child special allowance or child benefit;
    - (c) any change in the amount of the claimant’s capital to be taken into account which does or may take the amount of his capital to more than £16,000;
    - (d) any change in the income or capital of –
      - (i) a non-dependant whose income and capital are treated as belonging to the claimant in accordance with regulation 20 (circumstances in which income and capital of a non-dependant is to be treated as claimant's), or
      - (ii) a person to whom regulation 23(4)(d) refers,
  - (7) A person who is on housing benefit and on state pension credit need only report to the designated office the changes specified in paragraphs (5) and (6).”.

## Decisions

16.—(1) In Part II of Schedule 6 to the Housing Benefit Regulations (matters to be included in the decision notice: awards where income support or an income-based jobseeker’s allowance is payable) –

- (a) in the heading after “income support” there shall be inserted “, state pension credit”;
  - (b) paragraph 9(**83**) shall be renumbered 9(1);
  - (c) in the re-numbered paragraph 9(1) after “income support” there shall be inserted “, state pension credit”.
- (2) After paragraph 9(1) there shall be inserted the following sub-paragraph –
- “(2) In a case where a person on state pension credit has entitlement only to the savings credit, the following additional matters shall also be set out –

(81) Paragraph (1) was amended by regulation 8(3)(a) of S.R. 2001 No. 175 and regulation 4(h) of S.R. 2001 No. 215

(82) Paragraph (4) was added by regulation 8(3)(b) of S.R. 2001 No. 175

(83) Paragraph 9 was amended by regulation 13 of S.R. 1989 No. 125, regulation 23(2)(a) of S.R. 1996 No. 334 and regulation 6(b) of S.R. 2001 No. 215

- (a) the applicable amount and the basis of the calculation;
- (b) the amount of the savings credit and any child tax credit, child benefit or child special allowance taken into account;
- (c) the amount of the person's income and capital as notified to the relevant authority by the Department and taken into account for the purposes of the housing benefit assessment;
- (d) any modification of the claimant's income or capital made in accordance with regulation 23(84) (calculation of claimant's income and capital in savings credit only cases);
- (e) the amount of the claimant's capital if regulation 23(7)(85) applies in his case.”.

#### **Amendments relating to recovery of overpaid housing benefit**

**17.** In regulation 105(1)(86) of the Housing Benefit Regulations (recovery of overpayment from prescribed benefits) at the end there shall be added the following sub-paragraph –

“(f) state pension credit.”.

#### **Minor amendments**

**18.—**(1) In the Housing Benefit Regulations listed in paragraph (2), after “income support”, there shall be inserted “, state pension credit”.

(2) Those regulations are –

- (a) regulation 4(5)(87) (remunerative work);
- (b) regulation 93(1)(a)(88) (circumstances in which payment is to be made to a landlord or the Department of Finance and Personnel).

#### **Amendment of the Housing Benefit (Decisions and Appeals) Regulations**

**19.—**(1) The Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(89) shall be amended in accordance with paragraph (2).

(2) In regulation 8 (date from which a decision superseding an earlier decision takes effect) –

- (a) in paragraph (2), for “in accordance with regulations 68 and 68A of the Housing Benefit Regulations (date on which change of circumstances is to take effect and date of change of circumstances following decision as to whether a person took part in a work-focused interview)” there shall be substituted “in accordance with regulations 68, 68A or 68B of the Housing Benefit Regulations (date on which change of circumstances is to take effect, date of change of circumstances following decision as to whether a person took part in a work-focused interview and change of circumstances where state pension credit payable)”;
- (b) in paragraph (3)(a), after “68A” there shall be inserted “or 68B”.

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(84) Regulation 23 is modified by regulation 8 of these Regulations

(85) Regulation 23(7) is modified by regulation 8 of these Regulations

(86) Paragraph (1) was amended by regulation 16 of S.R. 1988 No. 424, regulation 11(3)(a) and (b) of S.R. 1992 No. 6 and regulation 18 of S.R. 1996 No. 334

(87) Paragraph (5) was amended by regulation 3 of S.R. 1996 No. 334

(88) Paragraph (1)(a) was amended by regulation 16 of S.R. 1996 No. 334, regulation 7(g) of S.R. 1996 No. 448 and regulation 11(a) of S.R. 1997 No. 22

(89) S.R. 2001 No. 213; to which there are no relevant amending Regulations

### **Transitional provision**

**20.** A claim for housing benefit made after the day this regulation comes into operation but before 6th October 2004 by a person who has attained or whose partner has attained the qualifying age for state pension credit shall be treated as made –

- (a) on 6th October 2003, or
- (b) on the day that person or, as the case may be, his partner attained the qualifying age for state pension credit,

whichever is the later, if the relevant authority is satisfied that, on that day, the claimant satisfied the conditions of entitlement to housing benefit.

### **Claims made before 6th October 2003**

**21.**—(1) This regulation applies if –

- (a) a claim is made or treated as made for housing benefit on or after 6th April 2003;
- (b) the claim is made by a person who has attained, or whose partner has attained, the qualifying age for state pension credit or who will attain or whose partner will attain that age on or before 6th October 2003; and
- (c) the person making the claim does not satisfy the conditions for entitlement to housing benefit.

(2) If in the opinion of the relevant authority determining the claim, the conditions for claiming housing benefit will be satisfied on 6th October 2003 unless there is a change in the claimant's circumstances, the authority may –

- (a) treat the claim as if made for a period beginning on 6th October 2003, and
- (b) award benefit accordingly, but subject to the condition that the claimant does in fact satisfy those conditions when benefit becomes payable under the award.

(3) A decision under paragraph (2)(b) to award housing benefit may be revised under paragraph 3 of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000<sup>(90)</sup> if the requirements for entitlement to housing benefit is found not to have been satisfied on 6th October 2003.

### **Existing claimants**

**22.**—(1) In the case of an existing claimant who, on 6th October 2003, has been a patient for more than 6 weeks but not more than 13 weeks regulation 16(2) of the Housing Benefit Regulations, as inserted by regulation 6(1) of these Regulations, shall have effect as if for the reference to “13 weeks” there were substituted a reference to “6 weeks”.

(2) In this regulation –

- (a) “an existing claimant” is a person who –
  - (i) immediately before 6th October 2003, is entitled to housing benefit, and
  - (ii) attains or has attained the qualifying age for state pension credit on or before 6th October 2003;
- (b) “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a young offenders centre or training school) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975<sup>(91)</sup>;

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<sup>(90)</sup> 2000 c. 4 (N.I.)

<sup>(91)</sup> S.R. 1975 No. 109

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (c) for the purposes of calculating the period of 6 weeks referred to in paragraph (1), where a person has been maintained free of charge while undergoing medical or other treatment as an in-patient in a hospital or similar institution within the meaning of that paragraph for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been so maintained for a period equal in duration to the total of those distinct periods.

Sealed with the Official Seal of the Department for Social Development on 25th March 2003.

L.S.

*D. A. Baker*  
Senior Officer of the  
Department for Social Development

The Department of Finance and Personnel hereby consents to the foregoing Regulations.  
Sealed with the Official Seal of the Department of Finance and Personnel on 25th March 2003.

L.S.

*D. Thomson*  
Senior Officer of the  
Department of Finance and Personnel