

## SCHEDULE 2

Regulation 6(6)(c)

### HOUSING COSTS

#### Housing costs

1.—(1) Subject to paragraphs 2 to 15, the housing costs applicable to a claimant in accordance with regulation 6(6)(c) are those costs –

- (a) which the claimant or, if he has a partner, his partner is, in accordance with paragraph 3, liable to meet in respect of the dwelling occupied as the home which he or his partner is treated as occupying, and
- (b) which qualify under paragraphs 11 to 13.

(2) In this Schedule –

“disabled person” means a person –

- (a) aged 75 or over, who, had he in fact been entitled to income support, would have satisfied the requirements of paragraph 12 of Schedule 2 to the Income Support Regulations(1) (additional condition for the higher pensioner and disability premiums), or
- (b) who –
  - (i) has not attained the age of 19 and for whom the claimant or his partner is responsible; and
  - (ii) is a person in respect of whom disability living allowance is payable or would be payable but for any provision of the Social Security (Hospital In-Patients) Regulations (Northern Ireland)1975(2); or
  - (iii) is registered as blind in a register compiled by a Health and Social Services Board established under Article 16 of the 1972 Order;

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

“standard rate” means the rate for the time being specified in paragraph 9.

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

(4) In this Schedule, “non-dependant” means any person, except someone to whom sub-paragraph (5), (6) or (7) applies, who normally resides with the claimant.

(5) This sub-paragraph applies to –

- (a) a partner of the claimant or any person under the age of 19 for whom the claimant or the claimant’s partner is responsible;
- (b) a person who lives with the claimant in order to care for him or for the claimant’s partner and who is engaged for that purpose by a charitable or voluntary organisation which makes a charge to the claimant or the claimant’s partner for the care provided by that person;
- (c) a partner of a person to whom head (b) applies.

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(1) Paragraph 12 was amended by regulation 30(c)(i) of S.R. 1988 No. 146, regulation 15(b) of S.R. 1988 No. 431, regulation 6(e) of S.R. 1989 No. 395, regulation 2(5)(b) of S.R. 1990 No. 387, regulation 10(4)(b) of S.R. 1992 No. 6, regulation 2(9)(a) of S.R. 1994 No. 327, regulation 2(12) of S.R. 1995 No.67, regulation 2(9) of S.R. 1995 No.86, regulation 2(8) of S.R. 1995 No. 367, regulation 8(3)(b) of S.R. 1998 No. 324, regulation 2(8) of S.R. 1999 No. 381 and regulation 2(2) of S.R. 1999 No. 385

(2) S.R. 1975 No. 109

(3) Section 167E was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I.1994/1898 (N.I. 12))

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(6) This sub-paragraph applies to a person, other than a close relative of the claimant or the claimant's partner –

- (a) who is liable to make payments on a commercial basis to the claimant or the claimant's partner in respect of his occupation of the claimant's dwelling, or
- (b) who is a member of the household of a person to whom head (a) applies.

(7) This sub-paragraph applies to –

- (a) a person who jointly occupies the claimant's dwelling and who is either –
  - (i) co-owner of that dwelling with the claimant or the claimant's partners (whether or not there are other co-owners), or
  - (ii) jointly liable with the claimant or the claimant's partner to make payments to a landlord in respect of his occupation of that dwelling;
- (b) a partner of a person to whom head (a) applies.

(8) For the purpose of sub-paragraphs (4) to (7) a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area but not if each person is separately liable to make payments in respect of his occupation of the dwelling to the landlord.

(9) In sub-paragraph (8) "communal area" means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation.

### **Remunerative work**

2.—(1) Subject to sub-paragraphs (2) to (9), a person shall be treated for the purposes of this Schedule as engaged in remunerative work if he is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 16 hours a week, in work for which payment is made or which is done in expectation of payment.

(2) Subject to sub-paragraph (3), in determining the number of hours for which a person is engaged in work where his hours of work fluctuate, regard shall be had to the average of hours worked over –

- (a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does no work, those periods but disregarding any other absences);
- (b) in any other case, the period of 5 weeks immediately prior to the date of claim, or such other length of time as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(3) Where, for the purposes of sub-paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.

(4) Where no recognisable cycle has been established in respect of a person's work, regard shall be had to the number of hours or, where those hours will fluctuate, the average of the hours, which he is expected to work in a week.

(5) A person shall be treated as engaged in remunerative work during any period for which he is absent from work referred to in sub-paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(6) A person in receipt of income support or an income-based jobseeker's allowance for more than 3 days in any benefit week shall be treated as not being in remunerative work in that week.

(7) A person shall not be treated as engaged in remunerative work on any day on which the person is on maternity leave or is absent from work because he is ill.

(8) A person shall not be treated as engaged in remunerative work on any day on which he is engaged in an activity in respect of which –

- (a) a sports award has been made, or is to be made, to him, and
- (b) no other payment is made or is expected to be made to him,

and for the purposes of this sub-paragraph, “sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993<sup>(4)</sup> out of sums allocated to it for distribution under that section.

(9) In this paragraph “benefit week” –

- (a) in relation to income support, has the same meaning as in regulation 2(1) of the Income Support Regulations<sup>(5)</sup>;
- (b) in relation to jobseeker’s allowance, has the same meaning as in regulation 1(2) of the Jobseeker’s Allowance Regulations<sup>(6)</sup>.

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

3. A person is liable to meet housing costs where –

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

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

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

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

(3) Subject to sub-paragraph (4), where a claimant who has no partner is a full-time student or is on a training course and is liable to make payments (including payments of mortgage interest or analogous payments) in respect of either (but not both) the dwelling which he occupies for the purpose of attending his course of study or his training course or, as the case may be, the dwelling which he occupies when not attending his course, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.

(4) A full-time student shall not be treated as occupying a dwelling as his home for any week of absence from it, other than an absence occasioned by the need to enter hospital for treatment,

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(4) [1993 c. 39](#)

(5) The definition of “benefit week” was amended by regulation 2(a) of [S.R. 1988 No. 318](#)

(6) The definition of “benefit week” was amended by regulation 2(2)(a) of [S.R. 1996 No. 358](#)

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outside the period of study, if the main purpose of his occupation during the period of study would be to facilitate attendance on his course.

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

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

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

(7) Where –

- (a) a person has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in;
- (b) he had claimed state pension credit before moving in and either that claim has not yet been determined or it has been determined but –
  - (i) an amount has not been included under this Schedule, or
  - (ii) the claim has been refused and a further claim has been made within 4 weeks of the date on which the claimant moved into the new dwelling occupied as the home, and
- (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and –
  - (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the claimant, his partner or a person under the age of 19 for whom either the claimant or his partner is responsible,
  - (ii) the move was delayed pending the outcome of an application under Part VIII of the Contributions and Benefits Act(7) for a social fund payment to meet a need arising out of the move or in connection with setting up the home in the dwelling, or
  - (iii) the person became liable to make payments in respect of the dwelling while he was a patient or was in a residential care home or nursing home,

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

(8) This sub-paragraph applies to a person who enters a residential care home or nursing home –

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

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(7) Part VIII was amended by Articles 66 and 67 of, and paragraph 53(3) and (4) of Schedule 6 to, the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

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

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

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

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

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

- (a) he intends to return to occupy the dwelling as his home;
- (b) while the part of the dwelling which is normally occupied by him has not been let or, as the case may be, sub-let;
- (c) he is –
  - (i) detained in custody on remand pending trial or, as a condition of bail, required to reside in a hostel or, as the case may be, detained pending sentence upon conviction;
  - (ii) resident in a hospital or similar institution as a patient;
  - (iii) undergoing or, as the case may be, his partner or a person who has not attained the age of 19 and who is dependent on him or his partner is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than in a residential care home or nursing home;
  - (iv) following, in the United Kingdom or elsewhere, a training course;
  - (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
  - (vi) undertaking the care of a person under the age of 19 whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
  - (vii) a person who is, whether in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than a residential care home or nursing home;
  - (viii) a full-time student to whom sub-paragraph (3) or (6)(b) does not apply;
  - (ix) a person, other than a person to whom sub-paragraph (8) applies, who is receiving care provided in a residential care home or nursing home, or
  - (x) a person to whom sub-paragraph (6)(a) does not apply and who has left the dwelling he occupies as his home through fear of violence in that dwelling, or by a person who was formerly his partner or is a close relative, and
- (d) the period of his absence is unlikely to exceed a period of 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

(12) A person to whom sub-paragraph (11) applies is to be treated as occupying the dwelling he normally occupies as his home during any period of absence not exceeding 52 weeks beginning with and including the first day of that absence.

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(13) In this paragraph –

- (a) “medically approved” means certified by a medical practitioner;
- (b) “training course” means such a course of training or instruction provided wholly or partly by, or on behalf of, or in pursuance of arrangements made with, or approved by, or on behalf of, a government department.

### **Housing costs not met**

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

- (a) in respect of housing benefit expenditure, or
- (b) where the claimant is in accommodation which is a residential care home or nursing home except where he is in such accommodation during a temporary absence from the dwelling he occupies as his home and in so far as they relate to temporary absences, the provisions of paragraph 4(8) to (12) apply to him during that absence.

(2) Subject to sub-paragraphs (3) to (13), loans which, apart from this paragraph, qualify under paragraph 11 shall not so qualify where the loan was incurred during the relevant period and was incurred –

- (a) after 1st October 1995;
- (b) after 2nd May 1994 and the housing costs applicable to that loan were not met by virtue of the former paragraph 5A of Schedule 3 to the Income Support Regulations<sup>(8)</sup> in any one or more of the 26 weeks preceding 2nd October 1995, or
- (c) subject to sub-paragraph (3), in the 26 weeks preceding 2nd October 1995 by a person –
  - (i) who was not at that time entitled to income support, and
  - (ii) who becomes, or whose partner becomes entitled to income support or an income-based jobseeker’s allowance after 1st October 1995 and that entitlement is within 26 weeks of an earlier entitlement to income support or an income-based jobseeker’s allowance of the claimant or his partner.

(3) Sub-paragraph (2)(c) shall not apply in respect of a loan where the claimant has interest payments on that loan met without restrictions under an award of income support in respect of a period commencing before 2nd October 1995.

(4) The “relevant period” for the purposes of this paragraph is any period during which the person to whom the loan was made –

- (a) is entitled to income support, income-based jobseeker’s allowance or state pension credit, or
- (b) has a partner and the partner is entitled to income support, income-based jobseeker’s allowance or to state pension credit,

together with any linked period, that is to say a period falling between 2 periods separated by not more than 26 weeks in which one of heads (a) or (b) is satisfied.

(5) For the purposes of sub-paragraph (4), a person shall be treated as entitled to income support or, as the case may be, income-based jobseeker’s allowance or state pension credit, during any period when he or his partner was not so entitled because –

- (a) that person or his partner was participating in an employment programme specified in regulation 75(1)(a) of the Jobseeker’s Allowance Regulations<sup>(9)</sup>, in the Preparation for

<sup>(8)</sup> Paragraph 5A was inserted by regulation 2 of S.R. 1994 No. 138 and revoked by Schedule 4 to S.R. 1995 No. 301

<sup>(9)</sup> Regulation 75 was substituted by regulation 8 of S.R. 1997 No. 541 and paragraph (1)(a) was amended by regulation 4(2) of S.R. 1998 No. 182, regulation 2(4) of S.R. 2000 No. 197 and paragraph 32 of Schedule 2 to S.R. 2000 No. 350

Employment Programme specified in regulation 75(1)(a)(v) of those Regulations<sup>(10)</sup> or in the Preparation for Employment Programme for 50 plus, and

(b) in consequence of such participation that person or his partner was engaged in remunerative work or –

(i) in the case of income support, had an income in excess of the claimant's applicable amount as prescribed in Part IV of the Income Support Regulations, or

(ii) in the case of state pension credit, the claimant's income exceeded the amount of his state pension credit entitlement.

(6) For the purposes of sub-paragraph (4) –

(a) any week in the period of 26 weeks ending on 1st October 1995 on which there arose an entitlement to income support such as is mentioned in that sub-paragraph shall be taken into account in determining when the relevant period commences, and

(b) 2 or more periods of entitlement and any intervening linked periods shall together form a single relevant period.

(7) Where the loan to which sub-paragraph (2) refers has been applied –

(a) for paying off an earlier loan, and that earlier loan qualified under paragraph 11 during the relevant period, or

(b) to finance the purchase of a property where an earlier loan, which qualified under paragraph 11 or 12 during the relevant period in respect of another property, is paid off (in whole or in part) with monies received from the sale of that property,

then the amount of the loan to which sub-paragraph (2) applies is the amount (if any) by which the new loan exceeds the earlier loan.

(8) Notwithstanding sub-paragraphs (1) to (7), housing costs shall be met in any case where a claimant satisfies any of the conditions specified in sub-paragraphs (9) to (12), but –

(a) those costs shall be subject to any additional limitations imposed by the sub-paragraph, and

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

(9) The conditions specified in this sub-paragraph are that –

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

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

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

(i) the housing benefit payable in the week mentioned at sub-paragraph (9)(b), and

(ii) any additional amount applicable to the claimant or his partner in accordance with regulation 6(6)(c) in that week,

and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of the acquisition, in the standard rate or in any housing costs which qualify under paragraph 13 (other housing costs).

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

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<sup>(10)</sup> Head (v) was inserted by regulation 5(a) of S.R. 2001 No. 151



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- (11) The conditions specified in this sub-paragraph are that –
- (a) the loan commitment increased in consequence of the disposal of the dwelling occupied as the home and the acquisition of an alternative such dwelling, and
  - (b) the change of dwelling was made solely by reason of the need to provide separate sleeping accommodation for persons of different sexes aged 10 or over but under 19 who live with the claimant and are looked after by the claimant or his partner.
- (12) The conditions specified in this sub-paragraph are that –
- (a) during the relevant period the claimant or his partner acquires an interest (“the relevant interest”) in a dwelling which he then occupies as his home, and
  - (b) in the week preceding the week in which the relevant interest was acquired, an additional amount was applicable under regulation 6(6)(c) in respect of the claimant or his partner which included an amount determined by reference to paragraph 13 and did not include any amount specified in paragraph 11 or 12,

so however that the amount to be met by way of housing costs shall initially not exceed the amount so determined, and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of acquisition, in the standard rate or in any housing costs which qualify under paragraph 13 (other housing costs).

- (13) Paragraphs 6 to 15 shall have effect subject to the provisions of this paragraph.

#### **Apportionment of housing costs**

6.—(1) Where for the purposes of Article 4 of, and Schedule 5 to, the Rates (Northern Ireland) Order 1977<sup>(11)</sup>, it appears to the Department of Finance and Personnel or it was determined in pursuance of paragraphs 2 to 4 of that Schedule that the hereditament, includes the home and that only a proportion of the rateable value of the hereditament was attributable to use for the purpose of a private dwelling, the additional amount applicable under this Schedule shall be such proportion of the amounts applicable in respect of the hereditament or premises as a whole as is equal to the proportion of the rateable value of the hereditament attributable to the part of the hereditament used for the purposes of a private tenancy.

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

#### **The calculation for loans**

7.—(1) The weekly amount of housing costs to be met under this Schedule in respect of a loan which qualifies under paragraph 11 or 12 shall be calculated by applying the formula –

$$\frac{A \times B}{52}$$

where –

A = the amount of the loan which qualifies under paragraph 11 or 12;

B = the standard rate for the time being specified in respect of that loan under paragraph 9.

(2) For the purposes of sub-paragraph (1) and subject to sub-paragraphs (3) and (4A), the amount of any qualifying loan shall be determined on the date the housing costs are first met and thereafter on the anniversary of that date.

- (3) Where the claimant or his partner –

<sup>(11)</sup> S.I. 1977/2157 (N.I. 28)



- (a) ceases to be in receipt of or treated as being in receipt of state pension credit; but
- (b) within 12 weeks thereof, one of them subsequently becomes entitled again to the credit, and
- (c) sub-paragraph (4) applies,

the amount of the qualifying loan shall be –

- (i) the amount last determined for the purposes of the earlier entitlement, and
- (ii) recalculated on the relevant date specified in sub-paragraph (2), housing costs were first met.

(4) This sub-paragraph applies if –

- (a) the earlier entitlement included an amount in respect of a qualifying loan, and
- (b) the circumstances affecting the calculation of the qualifying loan remain unchanged since the last calculation of that loan.

(5) Where in the period since the amount applicable under this Schedule was last determined, there has been a change of circumstances, other than a reduction in the amount of the outstanding loan, which increases or reduces the amount applicable, it shall be recalculated so as to take account of that change.

### **General provisions applying to housing costs**

8.—(1) Where for the time being a loan exceeds, or in a case where more than one loan is to be taken into account, the aggregate of those loans exceeds the appropriate amount specified in sub-paragraph (2), then the amount of the loan or, as the case may be, the aggregate amount of those loans, shall for the purposes of this Schedule, be the appropriate amount.

(2) Subject to sub-paragraphs (3) to (8), the appropriate amount is £100,000.

(3) Where a person is treated under paragraph 4(6) (payments in respect of 2 dwellings) as occupying 2 dwellings as his home, then the restrictions imposed by sub-paragraph (1) shall be applied separately to the loans for each dwelling.

(4) In a case to which paragraph 6 (apportionment of housing costs) applies, the appropriate amount for the purposes of sub-paragraph (1) shall be the lower of –

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

$$P \times Q,$$

where –

P = the relevant fraction for the purposes of paragraph 6, and

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

- (b) the sum for the time being specified in sub-paragraph (2).

(5) In a case to which paragraph 11(3) or 12(3) (loans which qualify in part only) applies, the appropriate amount for the purposes of sub-paragraph (1) shall be the lower of –

- (a) a sum representing for the time being the part of the loan applied for the purposes specified in paragraph 11(1) or, as the case may be, paragraph 12(1), or
- (b) the sum for the time being specified in sub-paragraph (2).

(6) In the case of any loan to which paragraph 12(2)(k) (loan taken out and used for the purpose of adapting a dwelling for the special needs of a disabled person) applies the whole of the loan, to the extent that it remains unpaid, shall be disregarded in determining whether the amount for the time being specified in sub-paragraph (2) is exceeded.

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(7) Where in any case the amount for the time being specified for the purposes of sub-paragraph (2) is exceeded and there are 2 or more loans to be taken into account under either or both paragraphs 11 and 12, then the amount of eligible interest in respect of each of those loans to the extent that the loans remain outstanding shall be determined as if each loan had been reduced to a sum equal to the qualifying portion of that loan.

(8) For the purposes of sub-paragraph (7), the qualifying portion of a loan shall be determined by applying the following formula –

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

where –

R = the amount for the time being specified for the purposes of sub-paragraph (1);

S = the amount of the outstanding loan to be taken into account;

T = the aggregate of all outstanding loans to be taken into account under paragraphs 11 and 12.

### **The standard rate**

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

- (a) except where sub-paragraph (2) applies shall be the rate specified in paragraph 12(1)(a) of Schedule 3 to the Income Support Regulations(12), or
- (b) where sub-paragraph (2) applies, shall equal the actual rate of interest charged on the loan on the day the housing costs first fall to be met.

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

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

### **Excessive housing costs**

10. –

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

- (a) the dwelling occupied as the home, excluding any part which is let, is larger than is required by the claimant, his partner (if he has one), any person under the age of 19 and any other non-dependants having regard, in particular, to suitable alternative accommodation occupied by a household of the same size;
- (b) the immediate area in which the dwelling occupied as the home is located is more expensive than other areas in which suitable alternative accommodation exists, or
- (c) the outgoings of the dwelling occupied as the home which are met under paragraphs 11 to 13 are higher than the outgoings of suitable alternative accommodation in the area.

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

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(12) Schedule 3 was substituted by S.R. 1995 No. 301

(3) Subject to sub-paragraphs (4) to (10), the amount of the loan which falls to be met shall be restricted and the excess over the amounts which the claimant would need to obtain suitable alternative accommodation shall not be allowed.

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

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

- (a) the availability of suitable accommodation and the level of housing costs in the area, and
- (b) the circumstances of the claimant and those who live with him, including in particular the age and state of health of any of those persons, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any person below the age of 19 who lives with the claimant.

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

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

(8) Any period in respect of which –

- (a) state pension credit was paid to a person, and
- (b) it was subsequently determined that he was not entitled to state pension credit for that period,

shall be treated for the purposes of sub-paragraph (7) as a period in respect of which he was not in receipt of state pension credit.

(9) Any period which falls before the appointed day in respect of which a person was entitled to income support or income-based jobseeker’s allowance shall be treated, for the purpose of calculating any period of 26 weeks or as the case may be 12 weeks mentioned in sub-paragraphs (6) and (7), as a period in respect of which he was entitled to state pension credit.

(10) References to state pension credit in sub-paragraphs (6) and (7) shall be treated as including references to income support and income-based jobseeker’s allowance in respect of any period which falls immediately before –

- (a) the appointed day, or
- (b) the day the claimant or his partner attains the qualifying age.

### **Loans on residential property**

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

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

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

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

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

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

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

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

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

- (a) provision of a fixed bath, shower, wash basin, sink or lavatory, and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
- (b) repairs to existing heating system;
- (c) damp proof measures;
- (d) provision of ventilation and natural lighting;
- (e) provision of drainage facilities;
- (f) provision of facilities for preparing and cooking food;
- (g) provision of insulation of the dwelling occupied as the home;
- (h) provision of electric lighting and sockets;
- (i) provision of storage facilities for fuel or refuse;
- (j) repairs of unsafe structural defects;
- (k) adapting a dwelling for the special needs of a disabled person, or
- (l) provision of separate sleeping accommodation for persons of different sexes aged 10 or over but under age 19 who live with the claimant and for whom the claimant or partner is responsible.

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

### **Other housing costs**

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

- (a) ground rent;
- (b) service charges;
- (c) payments by way of rentcharge;

- (d) where the dwelling occupied as the home is a tent, payments in respect of the tent and the site on which it stands.
- (2) Subject to sub-paragraph (3), the deductions to be made from the weekly amounts to be met under this paragraph are –
- (a) where the costs are inclusive of any of the items mentioned in paragraph 5(2) of Schedule 1 to the Housing Benefit (General) Regulations (Northern Ireland) 1987<sup>(13)</sup> (payment in respect of fuel charges), the deductions prescribed in that paragraph unless the claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, in which case the estimated amount;
  - (b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations (Northern Ireland) 1987 (ineligible service charges), the amounts attributable to those ineligible service charges or where that amount is not separated from or separately identified within the housing costs to be met under this paragraph, such part of the payments made in respect of those housing costs which are fairly attributable to the provision of those ineligible services having regard to the costs of comparable services;
  - (c) any amount for repairs and improvements, and for this purpose the expression “repairs and improvements” has the same meaning it has in paragraph 12(2).
- (3) Where arrangements are made for the housing costs, which are met under this paragraph and which are normally paid for a period of 52 weeks, to be paid instead for a period of 53 weeks, or to be paid irregularly, or so that no such costs are payable or collected in certain periods, or so that the costs for different periods in the year are of different amounts, the weekly amount shall be the amount payable for the year divided by 52.
- (4) Where the claimant or the claimant’s partner –
- (a) pays for reasonable repairs or redecoration to be carried out to the dwelling he occupies;
  - (b) that work was not the responsibility of the claimant or his partner, and
  - (c) in consequence of that work being done, the costs which are normally met under this paragraph are waived,
- then those costs shall, for a period not exceeding 8 weeks, be treated as payable.

#### **Persons residing with the claimant**

- 14.—(1) Subject to sub-paragraphs (2) to (8), the following deductions from the amount to be met under paragraphs 1 to 13 in respect of housing costs shall be made –
- (a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work but is not in receipt of state pension credit, £47.75;
  - (b) in respect of a non-dependant who is engaged in remunerative work and in receipt of state pension credit, £7.40;
  - (c) in respect of a non-dependant aged 18 or over to whom neither head (a) or (b) applies, £7.40.
- (2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (1)(a) applies because he is in remunerative work, where the claimant satisfies the Department that the non-dependant’s gross weekly income is –
- (a) less than £88.00, the deduction to be made under this paragraph shall be the deduction specified in sub-paragraph (1)(c);

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<sup>(13)</sup> S.R. 1987 No. 461; paragraph 5(2) was amended by regulation 7 of S.R. 1988 No. 314, regulation 10(b) of S.R. 1993 No. 145 and regulation 5(2) of S.R. 1996 No. 73

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- (b) not less than £88.00 but less than £131.00, the deduction to be made under this paragraph shall be £17.00;
- (c) not less than £131.00 but less than £170.00, the deduction to be made under this paragraph shall be £23.35;
- (d) not less than £170.00 but less than £225.00, the deduction to be made under this paragraph shall be £38.20;
- (e) not less than £225.00 but less than £281.00, the deduction to be made under this paragraph shall be £43.50.

(3) Only one deduction shall be made under this paragraph in respect of partners and where, but for this sub-paragraph, the amount that would fall to be deducted in respect of one partner is higher than the amount (if any) that would fall to be deducted in respect of the other partner, the higher amount shall be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of partners, only one deduction shall be made in respect of the partners based on the partners' joint weekly income.

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

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

- (a) registered as blind in a register compiled by a Health and Social Services Board established under Article 16 of the 1972 Order, or who is within 28 weeks of ceasing to be so registered, or
- (b) receiving in respect of himself either –
  - (i) an attendance allowance, or
  - (ii) the care component of the disability living allowance.

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

- (a) if, although he resides with the claimant, it appears to the Department that the dwelling occupied as his home is normally elsewhere;
- (b) if he is in receipt of a training allowance paid in connection with training provided or arranged by the Department for Employment and Learning under section 1 of the Employment and Training Act (Northern Ireland) 1950(14) or sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(15);
- (c) if he is a full-time student during a period of study or, if he is not in remunerative work, during a recognised summer vacation appropriate to his course;
- (d) if he is aged under 25 and in receipt of income support or an income-based jobseeker's allowance, or
- (e) if he is not residing with the claimant because he has been a patient for a period in excess of 13 weeks, or is a prisoner, and in calculating any period of 13 weeks, any 2 or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period.

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(14) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I.10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(15) 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))

(8) In the case of a non-dependant to whom sub-paragraph (1) applies because he is in remunerative work, there shall be disregarded from his gross income –

- (a) any attendance allowance or disability living allowance received by him;
- (b) any payment from the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), the Fund, the Eileen Trust or the Independent Living Funds, and
- (c) any payment in kind.

**Rounding of fractions**

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