
STATUTORY INSTRUMENTS

1987 No. 1967

The Income Support (General) Regulations 1987

PART V

INCOME AND CAPITAL

CHAPTER V

other income

Calculation of income other than earnings

40.—(1) For the purposes of regulation 29 (calculation of income other than earnings) the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs (2) and (3), be his gross income and any capital treated as income under regulations 24(3), 41 and 44 (treatment of charitable and voluntary payments, capital treated as income and modifications in respect of children and young persons).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1), any sum, where applicable, specified in Schedule 9.

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

(4) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 35(2) or 37(2) (payments not earnings) applies.

Capital treated as income

41.—(1) Any capital payable by instalments which are outstanding on the first day in respect of which income support is payable or the date of the determination of the claim, whichever is earlier, or, in the case of a review, the date of any subsequent review shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI of this Part exceeds £6,000, be treated as income.

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

(3) In the case of a person to whom section 23 of the Act (trade disputes) applies and for so long as it applies, any payment under section 1 of the Child Care Act 1980⁽²⁾ (duty of local authorities to promote welfare of children) or, as the case may be, section 12 of the Social Work (Scotland) Act 1968⁽³⁾ (general social welfare) shall be treated as income.

⁽¹⁾ The benefit Acts are specified in section 84(1) of the Social Security Act 1986 (c. 50).

⁽²⁾ 1980 c. 5.

⁽³⁾ 1968 c. 49.

Notional income

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

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) unemployment benefit under the Social Security Act which may be payable to a claimant who is not required to be available for employment; or
- (d) an increase of child benefit payable to a claimant under regulation 2(2) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976(4) (rates of child benefit),

income which would become available to the claimant upon application being made but which has not been acquired by him shall be treated as possessed by him but only from the date on which it would be so acquired.

(3) Except in the case of a discretionary trust, or a trust derived from a payment made in consequence of a personal injury, any income which is due to be paid to the claimant but—

- (a) has not been paid to him;
- (b) is not a payment prescribed in regulation 9 or 10 of the Social Security (Payments on Account, Overpayment and Recovery) Regulations 1987(5) (duplication and prescribed payments or maintenance payments) and not made on or before the date prescribed in relation to it,

shall be treated as possessed by the claimant.

(4) Any payment of income made—

- (a) to a third party in respect of a member of the family (but not a member of the third party's family) shall be treated—
 - (i) in a case where that payment is derived from a payment of any benefit under the benefit Acts, a war disablement pension or war widow's pension, as possessed by that member if it is paid to any member of that family;
 - (ii) in any other case, as possessed by that member to the extent that it is used for the food, clothing, footwear, fuel, rent or rates for which housing benefit is payable, or any housing costs to the extent that they are met under regulations 17(e) or 18(f) (housing costs), of any member of that family;
- (b) to a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that member to the extent that it is kept by him or used by or on behalf of any member of the family;

but, except where sub-paragraph (a)(i) applies and in the case of a person to whom section 23 of the Act (trade disputes) applies, this paragraph shall not apply to any payment in kind.

(5) Where a claimant's earnings are not ascertainable at the time of the determination of the claim or of any subsequent review the adjudication officer shall treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(6) Where—

- (a) a claimant performs a service for another person; and

(4) S.I.1976/1267; relevant amending instruments are S.I. 1980/110, 1986/1172 and 1987/45.

(5) S.I. 1987/491.

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

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

(7) Where a claimant is treated as possessing any income under any of paragraphs (1) to (4) the foregoing provisions of this Part shall apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(8) Where a claimant is treated as possessing any earnings under paragraph (5) or (6) the foregoing provisions of this Part shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (3) of regulation 36 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account the earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax in the year of assessment less only the personal relief to which the claimant is entitled under sections 8(1) and (2) and 14(1)(a) and (2) of the Income and Corporation Taxes Act 1970 (personal relief) as is appropriate to his circumstances; but, if the period over which those earnings are to be taken into account is less than a year, the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis;
- (b) an amount in respect of primary Class 1 contributions payable under the Social Security Act in respect of those earnings; and
- (c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

Notional earnings of seasonal workers

43.—(1) Where the claimant is a seasonal worker or, if he is one of a couple, he or his partner is a seasonal worker (but not both), and—

- (a) a claim for income support is made in respect of any day in the claimant's off-season or, as the case may be, in his partner's off-season; and
- (b) his or, as the case may be, his partner's net earnings in his last period of normal employment less any earnings for any week in that period which have been taken into account in calculating entitlement to income support, exceeded three times the total of the amounts for that period specified in head (i) or, as the case may be, (ii) of sub-paragraph (a) and, where applicable, sub-paragraph (b) of paragraph (2),

the amount by which those earnings exceeded that total shall be divided by the number equal to the number of weeks (including any part of a week) in his or, as the case may be, his partner's off-season and the amount so obtained shall be treated as earnings possessed by the claimant or his partner in each of those weeks.

(2) The amounts specified for the purposes of paragraph (1)(b) are—

- (a) either—
 - (i) in a case where the claimant is one of a couple, the personal allowance for a couple; or
 - (ii) in a case where he is not one of a couple, the personal allowance for a single claimant not less than age 25; and

- (b) in respect of each child or young person who is a member of the claimant's family, the amount which is equal to the applicable amount for a child under age 11.
- (3) Where the claimant and his partner are seasonal workers and both have started their, or only one has started his, off-season paragraph (1) shall apply to the claimant or, where his partner is the only one whose off-season has started, to his partner as if he were the only seasonal worker until the end of his off-season and thereafter to the other member subject to the modifications in paragraphs (4) to (6).
- (4) The other member's last period of normal employment shall be—
- (a) in a case where that member's normal employment has ceased, the period beginning with the start of the employment of that member and ending with the last day of that employment;
 - (b) in a case where that member's normal employment has not ceased, the period beginning with the start of the employment of that member and ending with—
 - (i) the day before the start of the off-season of his partner; or
 - (ii) the date of claim for income support, whichever is the later;
- (5) The period of the other member's off-season shall be—
- (a) in a case where that member's normal employment has ceased, the period beginning with the start of his off-season and ending with the day before he is to resume normal employment; or
 - (b) in a case where that member's normal employment has not ceased, the period beginning with the date on which the off-season of either member first starts or, as the case may be, the date of claim for income support whichever is later and ending with the day before that on which either member is first to resume normal employment.
- (6) The other member's net earnings in his last period of normal employment as determined under paragraph (4), less—
- (a) any earnings for any week in that period which have been taken into account in calculating entitlement to income support; and
 - (b) in so far as any week in that period—
 - (i) does not coincide with a week in his partner's period of normal employment, 3 times the total of the amounts for that week specified for the purposes of paragraph (1)(b);
 - (ii) does coincide with a week in his partner's period of normal employment, the extent (if any) by which the amount so specified has not been taken into account in the calculation of his partner's notional earnings,
 shall be divided by the number equal to the number of weeks (including any part of a week) in that member's off-season as determined under paragraph (5) and the amount so obtained shall be treated as earnings possessed by that member in each of those weeks.
- (7) In this regulation, the expressions "normal employment", "off-season" and "seasonal worker" have the meanings assigned to those expressions in regulation 21 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983(6) (additional condition with respect to receipt of unemployment benefit) except that the expression "employment" in that regulation shall be construed as if it included a reference to employment as a self-employed earner.
- (8) Where a claimant or his partner is treated as possessing any earnings under this regulation the foregoing provisions of this Part, except regulation 38(2) in so far as it applies to paragraph 3 of Schedule 8 (earnings to be disregarded), shall apply for the purposes of calculating those earnings as if a payment had actually been made and as if they were actual earnings which he does possess.

Modifications in respect of children and young persons

44.—(1) Any capital of a child or young person payable by instalments which are outstanding on the first day in respect of which income support is payable or at the date of the determination of the claim, whichever is earlier, or, in the case of a review, the date of any subsequent review shall, if the aggregate of the instalments outstanding and the amount of that child's or young person's other capital calculated in accordance with Chapter VI of this Part in like manner as for the claimant, except where otherwise provided, would exceed £3,000, be treated as income.

(2) In the case of a child or young person who is residing at an educational establishment at which he is receiving relevant education—

- (a) any payment made to the educational establishment, in respect of that child's or young person's maintenance, by or on behalf of a person who is not a member of the family or by a member of the family out of funds contributed for that purpose by a person who is not a member of the family, shall be treated as income of that child or young person but it shall only be taken into account over periods during which that child or young person is present at that educational establishment; and
- (b) if a payment has been so made, for any period in a benefit week in term-time during which that child or young person returns home, he shall be treated as possessing an amount of income in that week calculated by multiplying the amount of personal allowance and disabled child premium, if any, applicable in respect of that child or young person by the number equal to the number of days in that week in which he was present at his educational establishment and dividing the product by seven; but this sub-paragraph shall not apply where the educational establishment is provided under section 8 of the Education Act 1944(7) (duty of local authority to secure primary and secondary schools) by a local education authority or where the payment is made under section 49 or 50 of the Education (Scotland) Act 1980(8) (power of education authority to assist persons).

(3) Where a child or young person—

- (a) is resident at an educational establishment and he is wholly or partly maintained at that establishment by a local education authority under section 8 of the Education Act 1944; or
- (b) is maintained at an educational establishment under section 49 or 50 of the Education (Scotland) Act 1980,

he shall for each day he is present at that establishment be treated as possessing an amount of income equal to the sum obtained by dividing the amount of personal allowance and disabled child premium, if any, applicable in respect of him by seven.

(4) Where the income of a child or young person who is a member of the claimant's family calculated in accordance with the foregoing provisions of this Part exceeds the amount of the personal allowance and disabled child premium, if any, applicable in respect of that child or young person, the excess shall not be treated as income of the claimant.

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

(6) In calculating the net earnings or net profit of a child or young person there shall be disregarded, (in addition to any sum which falls to be disregarded under paragraphs 11 to 13), any sum specified in paragraphs 14 and 15 of Schedule 8 (earnings to be disregarded).

(7) 1944 c. 31 section 8 was amended by the Education (Miscellaneous Provisions) Act 1948 (c. 40) section 3, the Education Act 1980 (c. 20) section 38 and Schedule 7 and by the Education Act 1981 (c. 60) section 2.

(8) 1980 c. 44 section 50 was amended by the Education (Scotland) Act 1981 (c. 58) section 2.

(7) Any income of a child or young person which is to be disregarded under Schedule 9 (income other than earnings to be disregarded) shall be disregarded in such manner as to produce the result most favourable to the claimant.

(8) Where a child or young person is treated as possessing any income under paragraphs (2) and (3) the foregoing provisions of this Part shall apply for the purposes of calculating that income as if a payment had actually been made and as if it were actual income which he does possess.