
STATUTORY INSTRUMENTS

1987 No. 1971

**HOUSING, ENGLAND AND WALES
HOUSING,
SCOTLAND
RATING AND VALUATION**

The Housing Benefit (General) Regulations 1987

Made - - - - 20th November 1987

Coming into force

*for the purposes of all the
regulations to the extent they
relate to cases referred to in
regulation 1(1)(a) and (2)*

1st April 1988

for all other purposes

4th April 1988

Whereas a draft of this instrument was laid before Parliament in accordance with section 83(3) of the Social Security Act 1986 and approved by resolution of each House of Parliament—

Now therefore the Secretary of State for Social Services in exercise of the powers conferred upon him by sections 20(1)(c), (8), (11) and (12), 21(5), (6)(b) and (7), 22, 28(2) and (5), 29, 51(1)(a) to (c), (g), (h), (k) to (m), (n), (q) to (u) and 84(1) of the Social Security Act 1986⁽¹⁾ and section 166(1) to (3A) of the Social Security Act 1975⁽²⁾ and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of authorities concerned⁽³⁾, by this instrument, which is made before the end of a period of 12 months from the commencement of the enactments under which it is made, hereby makes the following Regulations—

PART I
GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Housing Benefit (General) Regulations 1987 and shall come into force

(1) [1986 c. 50](#); section 84(1) is an interpretation provision and is cited because of the meanings assigned to the words “prescribed” and “regulations”.

(2) [1975 c. 14](#); section 166(1) to (3A) is applied by the Social Security Act [1986 \(c. 50\)](#), section 83(1); section 166(3A) was inserted in the Social Security Act 1975 by section 62(1) of the 1986 Act.

(3) See Social Security Act 1986, section 61(7).

- (a) in any case to which paragraph (2)(a) or (b) applies, on 1st April 1988, and
 - (b) in any other case, on 4th April 1988.
- (2) This paragraph applies in any case where—
- (a) rent is payable at intervals of one month or any other interval which is not a week or a multiple thereof; or
 - (b) payments by way of rates are not made together with payments of rent at weekly intervals or multiples thereof.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1986⁽⁴⁾;

“appropriate DHSS office” means an office of the Department of Health and Social Security which is normally open to the public for the receipt of claims for income support and includes an office of the Department of Employment which is normally open to the public for the receipt of claims for unemployment benefit;

“assessment period” means such period as is prescribed in regulations 22 to 24 over which income falls to be calculated;

“attendance allowance” means:—

- (a) an attendance allowance under section 35 of the Social Security Act⁽⁵⁾;
- (b) an increase of disablement pension under section 61 of that Act;
- (c) a payment under regulations made in exercise of the power conferred by section 159(3)(b) of that Act;
- (d) an increase of an allowance which is payable in respect of constant attendance under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975⁽⁶⁾;
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983⁽⁷⁾ or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

“benefit period” has the meaning given to it in regulation 66;

“benefit week” means a period of 7 consecutive days commencing upon a Monday and ending on a Sunday;

“boarder” means a person who pays a charge for his accommodation and at least some cooked or prepared meals which are both prepared and consumed in that accommodation or associated premises;

“child” means a person under the age of 16;

“claim” means a claim for housing benefit;

“claimant” means a person claiming housing benefit;

(4) 1986 c. 50.

(5) 1975 c. 14; section 35 was amended by the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 63, the Social Security Act 1979 (c. 18), section 2 and by the Social Security Act 1980 (c. 30), Schedule 1, Part II, paragraph 8. Sub-sections (3) and (4) of section 61 were added by the Social Security Act 1986 (c. 50), section 39 and Schedule 3, paragraph 6.

(6) 1975 c. 16.

(7) S.I. 1983/686; the relevant amending instruments are S.I. 1983/1164 and 1984/1675.

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the Act, the Social Security Act or the Child Benefit Act 1975⁽⁸⁾ are charged;

“co-ownership scheme” means a scheme under which the dwelling is let by a housing association and the tenant, or his personal representative, will, under the terms of the tenancy agreement or of the agreement under which he became a member of the association, be entitled, on his ceasing to be a member and subject to any conditions stated in either agreement, to a sum calculated by reference directly or indirectly to the value of the dwelling;

“Crown tenant” means a person who occupies a dwelling under a tenancy or licence where the interest of the landlord belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department, except (in the case of an interest belonging to Her Majesty in right of the Crown) where the interest is under the management of the Crown Estate Commissioners;

“designated office” means the office designated by the appropriate authority, by way of notice upon a form approved by them for the purpose of claiming housing benefit, for the receipt of claims to housing benefit;

“earnings” has the meaning prescribed in regulation 28 or, as the case may be, 30;

“eligible rates” is to be construed in accordance with regulation 9;

“eligible rent” is to be construed in accordance with regulation 10;

“employed earner” is to be construed in accordance with section 2(1)(a) of the Social Security Act;

“family” has the meaning assigned to it by section 20(11) of the Act;

“housing association” has the meaning assigned to it by section 1(1) of the Housing Associations Act 1985⁽⁹⁾;

“invalid carriage or other vehicle” means a vehicle propelled by petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

“lone parent” means a person who is not a partner and who is responsible for and a member of the same household as a child or young person;

“long tenancy” means a tenancy granted for a term of years certain exceeding twenty one years, whether or not the tenancy is, or may become, terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture (or, in Scotland, irritancy) or otherwise and includes a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal unless it is a lease by sub-demise from one which is not a long tenancy;

“married couple” has the meaning assigned to it by section 20(11) of the Act;

“net earnings” means such earnings as are calculated in accordance with regulation 29;

“net profit” means such profit as is calculated in accordance with regulation 31;

“non-dependant” has the meaning prescribed in regulation 3;

“non-dependant deduction” means a deduction that is to be made under regulation 63;

⁽⁸⁾ 1975 c. 61.

⁽⁹⁾ 1985 c. 69.

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

“owner” means:–

- (a) in relation to a dwelling in England and Wales, the person who, otherwise than as a mortgagee in possession, is for the time being entitled to dispose of the fee simple, whether or not with the consent of other joint owners;
- (b) in relation to a dwelling in Scotland, the proprietor under udal tenure or the proprietor of the dominion utile or the tenant’s or the lessee’s interest in a long tenancy, a kindly tenancy, a lease registered or registerable under the Registration of Leases (Scotland) Act 1857⁽¹⁰⁾ or the Land Registration (Scotland) Act 1979⁽¹¹⁾ or a tenant-at-will as defined in section 20(8) of that Act of 1979;

“partner” means:–

- (a) where a claimant is a member of a married or unmarried couple, the other member of that couple; or
- (b) where a claimant is polygamously married to two or more members of his household, any such member;

“payment” includes part of a payment;

“person affected” means any person (including the appropriate authority) whose rights, duties or obligations are affected by a determination, whether or not on review, or by a decision on further review;

“person on income support” means a person in receipt of income support;

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

“polygamous marriage” means any marriage where there is more than one spouse and the ceremony of marriage as between the spouses took place under the law of a country which permits polygamy;

“rateable unit” means:–

- (a) in relation to England and Wales a hereditament as defined in section 115(1) of the General Rate Act 1967⁽¹²⁾;
- (b) in relation to Scotland, lands and heritages entered on the valuation roll;

“rates” has the same meaning as in section 84(1) of the Act except that in relation to Scotland it does not include domestic water rate within the meaning of section 39 of the Water (Scotland) Act 1980⁽¹³⁾;

“relative” means a close relative, grandparent, grandchild, uncle, aunt, nephew or niece;

“remunerative work” has the meaning prescribed in regulation 4;

“rent” includes all those payments in respect of a dwelling specified in regulation 10(1);

“self-employed earner” is to be construed in accordance with section 2(1)(b) of the Social Security Act;

“shared ownership tenancy” means:–

⁽¹⁰⁾ 1857 c. 26.

⁽¹¹⁾ 1979 c. 33.

⁽¹²⁾ 1967 c. 9.

⁽¹³⁾ 1980 c. 45.

- (a) in relation to England and Wales, a tenancy granted on payment of a premium calculated by reference to a percentage of the value of the dwelling or the cost of providing it;
- (b) in relation to Scotland, an agreement by virtue of which the tenant of a dwelling of which he and the landlord are joint owners is the tenant in respect of the landlord's interest in the dwelling or by virtue of which the tenant has the right to purchase the dwelling or the whole or part of the landlord's interest therein;

"single claimant" means a claimant who neither has a partner nor is a lone parent;

"Social Security Act" means the Social Security Act 1975⁽¹⁴⁾;

"student" has the meaning prescribed in regulation 46;

"unmarried couple" has the meaning assigned to it by section 20(11) of the Act;

"year of assessment" has the meaning prescribed in section 526(5) of the Income and Corporation Taxes Act 1970⁽¹⁵⁾;

"young person" has the meaning prescribed in regulation 13(1).

(2) In these Regulations a reference to the appropriate authority in respect of any dwelling is a reference to the appropriate authority for the purposes of section 28 of the Act.

(3) References in these Regulations to a person who is liable to make payments shall include references to a person who is treated as so liable under regulation 6.

(4) For the purposes of these Regulations, the following shall be treated as included in a dwelling—

(a) subject to sub-paragraphs (b) to (d) any land (whether or not occupied by a structure) which is used for the purposes of occupying a dwelling as a home where either:—

(i) the occupier of the dwelling acquired simultaneously the right to use the land and the right to occupy the dwelling, and, in the case of a person liable to pay rent for his dwelling, he could not have occupied that dwelling without also acquiring the right to use the land; or

(ii) the occupier of the dwelling has made or is making all reasonable efforts to terminate his liability to make payments in respect of the land;

(b) where the dwelling is a caravan or mobile home, such of the land on which it stands as is used for the purposes of the dwelling;

(c) where the dwelling is a houseboat, the land used for the purposes of mooring it;

(d) where in Scotland, the dwelling is situated on or pertains to a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1955⁽¹⁶⁾, the croft land on which it is situated or to which it pertains.

(5) In these Regulations, unless the context otherwise requires, a reference:—

(a) to a numbered Part is to the Part of these Regulations bearing that number;

(b) to a numbered regulation or Schedule is to the regulation in, or the Schedule to, these Regulations bearing that number;

(c) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;

(d) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

⁽¹⁴⁾ 1975 c. 14

⁽¹⁵⁾ 1970 c. 10

⁽¹⁶⁾ 1955 c. 21, amended and section 3(1)(d) added by the Crofters (Scotland) Act 1961 (c. 58), Schedule 1, Part II, paragraph 9 and amended by section 14 of the Crofting Reform (Scotland) Act 1976 (c. 21).

Definition of non-dependant

3.—(1) In these Regulations, “non-dependant” means any person, except someone to whom paragraph (2) applies, who normally resides with a claimant.

(2) This paragraph applies to—

- (a) any member of the claimant’s family;
- (b) if the claimant is polygamously married, any partner of his and any child or young person who is a member of his household and for whom he or one of his partners is responsible;
- (c) a child or young person who is living with the claimant but who is not a member of his household by virtue of regulation 15 (membership of the same household);
- (d) subject to paragraph (3), a person who jointly occupies the claimant’s dwelling;
- (e) subject to paragraph (3), any person who is liable to make payments in respect of his occupation of the dwelling to the claimant or the claimant’s partner;
- (f) a person who lives with the claimant in order to care for him or a partner of his and who is engaged by a charitable or voluntary body (other than a public or local authority) which makes a charge to the claimant or his partner for the services provided by that person.

(3) Excepting persons to whom paragraph (2)(a) to (c) and (f) refer, a person who normally resides with a claimant and who is a boarder or a person to whom any of sub-paragraphs (a) to (c) of regulation 7 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling) applies shall be a non-dependant.

(4) For the purposes of this regulation and regulation 7 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling) a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area within the meaning prescribed in paragraph 7 of Schedule 1.

Remunerative work

4.—(1) Subject to the following provisions of this regulation, a person shall be treated for the purposes of these Regulations 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 24 hours a week, in work for which payment is made or which is done in expectation of payment.

(2) 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 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.

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

(5) A person on income support for more than 3 days in any benefit week shall be treated as not being in remunerative work in that week.

PART II

PROVISIONS AFFECTING ENTITLEMENT TO HOUSING BENEFIT

Circumstances in which a person is or is not to be treated as occupying a dwelling as his home

5.—(1) Subject to the following provisions of this regulation, a person shall be treated as occupying as his home the dwelling normally occupied as his home—

- (a) by himself or, if he is a member of a family, by himself and his family; or
- (b) if he is polygamously married, by himself, his partners and any child or young person for whom he or any partner of his is responsible and who is a member of that same household,

and shall not be treated as occupying any other dwelling as his home.

(2) In determining whether a dwelling is the dwelling normally occupied as a person's home for the purpose of paragraph (1) regard shall be had to any other dwelling occupied by that person or any other person referred to in paragraph (1) whether or not that dwelling is in Great Britain.

(3) Where a single claimant or a lone parent is a student or is on a training course and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, 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 such payments.

(4) 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 is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which he normally occupied as his home or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.

(5) Where a person is liable to make payments in respect of two (but not more than two) 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 his home through fear of violence in that dwelling or by a former member of his family and it is reasonable that housing benefit should be paid in respect of both his former dwelling and his present dwelling occupied as the home; or
- (b) in the case of a married or unmarried couple or a member of a polygamous marriage, where he or one partner is a student or is on a training course and it is unavoidable that the partners should occupy two separate dwellings and reasonable that housing benefit should be paid in respect of both dwellings; or
- (c) in the case where, because of the number of persons referred to in paragraph (1), they have been housed by a housing authority in two separate dwellings; or
- (d) in the case where a person has moved into a new dwelling occupied as the home, except where paragraph (4) applies, for a period not exceeding four benefit weeks if his liability to make payments in respect of two dwellings is unavoidable.

(6) Where a person:—

- (a) has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
- (b) had claimed housing benefit before moving in and either that claim has not yet been determined or it has been refused but a further claim has been made or treated as 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 that person or any member of his family; or
 - (ii) the move was delayed pending the outcome of an application under Part III of the Act for a social fund payment to meet a need arising out of the move or in connection with setting up the home in the dwelling and either a member of the claimant's family is aged 5 or under or the claimant's applicable amount includes a premium under paragraph 9, 10, 11, 13 or 14 of Schedule 2; or
 - (iii) the claimant became liable to make payments in respect of the dwelling while he was a patient or in residential accommodation, he shall be treated as occupying the dwelling as his home for any period not exceeding 4 weeks immediately prior to the date on which he moved into the dwelling and in respect of which he was liable to make payments.

(7) Where a person is treated by virtue of paragraph (6) as occupying a dwelling as his home in respect of the period before moving in, his claim for housing benefit shall be treated as having been made on either—

- (a) in the case of a claim which has not yet been determined the date that claim was or was treated as made in accordance with regulation 72 (time and manner in which claims are to be made); or
- (b) in the case of a claim for housing benefit which has been refused and a further claim was or was treated as made in accordance with Part X (claims) within 4 weeks of the date on which he moved into the dwelling, the date on which the claim was refused or was treated as made; or
- (c) the date from which he is treated by virtue of paragraph (6) as occupying the dwelling as his home,

whichever of those dates is the later.

(8) A person shall be treated as occupying a dwelling as his home while he is temporarily absent therefrom for a period not exceeding 52 weeks only if—

- (a) he intends to return to occupy the dwelling as his home; and
- (b) the part of the dwelling normally occupied by him has not been let or, as the case may be, sub-let; and
- (c) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances (for example where the person is in hospital or otherwise has no control over the length of his absence), is unlikely substantially to exceed that period.

(9) In this regulation—

“patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution;

“residential accommodation” means accommodation which is provided by an establishment—

- (a) under sections 21 to 24 and 26 of the National Assistance Act 1948⁽¹⁷⁾ (provision of accommodation);

(17) 1948, c. 29; section 21 was amended by the Local Government Act 1972 (c. 70), Schedule 23 paragraphs 1 and 2 and Schedule 30; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4 paragraph 44 and Schedule 5; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the National Health Service Act 1977 (c. 49), Schedule 15 paragraph 5; the Health Services Act 1980 (c. 53), Schedule 1 Part I paragraph 5, Section 22 was amended by the Social Work (Scotland)

- (b) under section 21(1) of, and paragraph 1 or 2 of Schedule 8 to the National Health Service Act 1977⁽¹⁸⁾ (prevention, care and after-care);
- (c) under section 59 of the Social Work (Scotland) Act 1968⁽¹⁹⁾ (provision of residential and other establishments) where board is available to the claimant;
- (d) registered under Part I of the Registered Homes Act 1984⁽²⁰⁾;
- (e) run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;
- (f) managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament other than a local social services authority;
- (g) in Scotland, which is a home registered under section 61 of the Social Work (Scotland) Act 1968⁽²¹⁾ or is an establishment provided by a housing association registered with the Housing Corporation established by the Housing Act 1964⁽²²⁾ which provides care equivalent to that given in residential accommodation provided under Part IV of the Social Work (Scotland) Act 1968;
- (h) in premises which are a nursing home or mental nursing home within the meaning of the Registered Homes Act 1984 and which are either registered under Part II of that Act or exempt from registration under section 37 thereof (power to exempt Christian Science Homes);
- (i) in any premises used or intended to be used for the reception of such persons or the provision of such nursing or services as are mentioned in any of subsections (1)(a) to (c) of section 21 or section 22(1) of the Registered Homes Act 1984 (meaning of nursing home or mental nursing home) or, in Scotland, as are mentioned in section 10(2) of the Nursing Homes Registration (Scotland) Act 1938⁽²³⁾ (interpretation) and which are maintained or controlled by a body instituted by special Act of Parliament or incorporated by Royal Charter; or
- (j) in Scotland,
 - (i) in premises which are a nursing home within the meaning of section 10 of the Nursing Homes Registration (Scotland) Act 1938 which are either registered under

Act 1968 (c. 49), section 87(4) and Schedule 9 Part I; the Supplementary Benefits Act 1976 (c. 71) Schedule 7 paragraph 3; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the Social Security Act 1980 (c. 30), section 20, Schedule 4 paragraph 2(1) and Schedule 5 Part II and the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(a). Section 24 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1(1); the National Health Service (Scotland) Act 1972 (c. 58), Schedule 6 paragraph 82; the Local Government Act 1972 (c. 70), Schedule 23 paragraph 2; The National Health Service Reorganisation Act 1973 (c. 32), Schedule 4 paragraph 45 and the Housing (Homeless Persons) Act 1977 (c. 48), Schedule. Section 26 was amended by the Health Services and Public Health Act 1968 (c. 46), section 44 and Schedule 4 and the Social Work (Scotland) Act 1968 (c. 49) Schedule 9 Part I and applied by section 87(3); the Local Government Act 1972 (c. 70), Schedule 23 paragraph 2; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule and the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(b).

(18) 1977 c. 49; paragraphs 1(2) and 2(5) of Schedule 8 were repealed by section 30 and Schedule 10 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41); paragraphs 2(1) to 3 were amended by section 148 and Schedule 4 of the Mental Health Act 1983 (c. 20).

(19) 1968 c. 49.

(20) 1984 c. 23.

(21) 1968 c. 49; section 61(3) was amended by virtue of the Criminal Procedure (Scotland) Act 1975 (c. 21) section 289C(1) and Schedule 7C as inserted by the Criminal Law Act 1977 (c. 45) section 63(1) and Schedule 11 paragraphs 5 and 13 and section 289G as inserted by the Criminal Justice Act 1982 (c. 48) section 54.

(22) 1964 c. 56.

(23) 1938 c. 73; section 10 was amended by section 15 of the Mental Health (Scotland) Act 1960 (c. 61) and that amendment is preserved notwithstanding the repeal of that 1960 Act by section 126(1)(a) of the Mental Health (Scotland) Act 1984 (c. 36), subsection (2) of that section 10 was added by section 26 of, and paragraph 14(b) of Schedule 4 to the Health Services Act 1980 (c. 53). Section 10 was also amended by Schedule 1 of the National Health Service (Scotland) Act 1972 (c. 58); by Schedules 7 and 8 to the Nurses Midwives and Health Visitors Act 1979 (c. 36) and by Schedule 7 to the Health Services Act 1980 (c. 53).

that Act or exempt from registration under section 6 or 7 thereof⁽²⁴⁾ (general power to exempt homes and power to exempt Christian Science Homes); or

- (ii) in premises which are a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984⁽²⁵⁾ (private hospitals), and which are registered under that Act;

“training course” means 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 or the Manpower Services Commission.

Circumstances in which a person is to be treated as liable to make payments in respect of a dwelling

6.—(1) The following persons shall be treated as if they were liable to make payments in respect of a dwelling—

- (a) the person who is liable to make those payments;
- (b) a person who is a partner of the person to whom sub-paragraph (a) applies;
- (c) a person who has to make the payments if he is to continue to live in the home because the person liable to make them is not doing so and either—
 - (i) he was formerly a partner of the person who is so liable, or
 - (ii) he is some other person whom it is reasonable to treat as liable to make the payments;
 and
- (d) a person whose liability to make such payments is waived by his landlord as reasonable compensation in return for works actually carried out by the tenant in carrying out reasonable repairs or redecoration which the landlord would otherwise have carried out or be required to carry out but this sub-paragraph shall apply only for a maximum of 8 benefit weeks in respect of any one waiver of liability.

(2) A person shall be treated as liable to make a payment in respect of a dwelling for the whole of the period in respect of which the payment is to be made notwithstanding that the liability is discharged in whole or in part either before or during that period and, where the amount which a person is liable to pay in respect of a period is varied either during or after that period, he shall, subject to regulations 68 to 70 (dates of relevant changes of circumstances, weekly amounts and housing benefit for rent or rate free periods), be treated as liable to pay the amount as so varied during the whole of that period.

(3) Where there is no liability to pay rates in any benefit week because, exceptionally, the rating authority has failed to make a rate, but the claimant makes a payment by way of rates otherwise than to a rating authority and the amount of his rent treated as such a payment which he is liable to pay remains constant, he shall be treated as liable to make payments by way of rates.

Circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling

7. The following persons shall be treated as if they were not liable to make payments in respect of a dwelling—

- (a) a person who resides with the person to whom he is liable to make payments in respect of the dwelling and either—

⁽²⁴⁾ Section 6 was amended by Schedule 6 paragraph 75 to the National Health Service (Scotland) Act 1972 (c. 58) and by Schedule 15 to the National Health Service (Scotland) Act 1978 (c. 29). Section 7 was amended by section 26 and Schedule 4 paragraph 12 to the Health Services Act 1980 (c. 53).

⁽²⁵⁾ 1984 c. 36.

- (i) that person is a close relative of his or his partner, or
- (ii) the tenancy or other agreement between them is other than on a commercial basis;
- (b) a person whose liability to make payments in respect of the dwelling appears to the appropriate authority to have been created to take advantage of the housing benefit scheme except someone who was, for any period within the eight weeks prior to the creation of the agreement giving rise to the liability to make such payments, otherwise liable to make payments of rent in respect of the same dwelling;
- (c) a person who is a joint occupier of a dwelling and who was, at any time during the period of eight weeks prior to the creation of the joint tenancy or other agreement giving rise to the joint liability to make payments in respect of the dwelling, a non-dependant of one or more of the other joint occupiers of the dwelling, unless the appropriate authority is satisfied that the joint tenancy or other agreement was not created to take advantage of the housing benefit scheme;
- (d) a person who is a member of, and is fully maintained by, a religious order.

PART III

PAYMENTS IN RESPECT OF A DWELLING

Eligible housing costs

8.—(1) Subject to paragraph (2), housing benefit shall be payable in respect of the payments specified in regulations 9(1) and 10(1) (rates and rent) and a claimant's maximum housing benefit shall be calculated under Part VIII (amount of benefit) by reference to—

- (a) in the case of a rate rebate, the amount of his eligible rates determined in accordance with regulation 9(3) (rates); and
 - (b) in the case of a rent rebate or allowance, the amount of his eligible rent determined in accordance with regulation 10(3) (rent).
- (2) Housing benefit shall not be payable in respect of the following payments—
- (a) subject to paragraph (3), payments made by a person on income support whose applicable amount for that benefit includes an amount in respect of those payments; and
 - (b) payments in respect of accommodation provided under—
 - (i) sections 21 to 24 and 26 of the National Assistance Act 1948; or
 - (ii) section 21(1) of and paragraph 1 or 2 of Schedule 8 to the National Health Service Act 1977~~(26)~~ or;
 - (iii) in Scotland, section 59 of the Social Work (Scotland) Act 1968~~(27)~~ where board is available to the claimant; and
 - (c) payments by a person on income support who is aged under 25 and who, but for his age, would be entitled to income support calculated on the basis that he is in board and lodging accommodation.

(3) Where a person who has been awarded housing benefit in respect of a dwelling becomes entitled to income support and his applicable amount for the purpose of calculating his entitlement to that benefit includes an amount for board and lodging at that dwelling, the payments made by

(26) 1977 c. 49; paragraphs 1 and 2 of Schedule 8 were amended by section 30 Schedule 10 Part I of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), paragraph 2 also amended by section 148 Schedule 4 of the Mental Health Act 1983 (c. 20).

(27) 1968 c. 49.

him in respect of that dwelling shall continue to be eligible for housing benefit for a period of four benefit weeks beginning with the benefit week after the date on which he becomes entitled to income support.

Rates

9.—(1) The payments in respect of which housing benefit is payable in the form of a rate rebate are the payments by way of rates in respect of the dwelling which a person occupies as his home.

(2) Where a person is liable to make payments only of such a kind as are specified in regulation 10(1) (rent) in respect of the dwelling which he occupies as his home and which comprises part only of a rateable unit, the proportion of those payments equal to the proportion of the rates payable in respect of the rateable unit as a whole which appears to the appropriate authority to be referable to his dwelling shall be treated as payments by way of rates for the purposes of paragraph (1).

(3) Subject to any apportionment in accordance with paragraphs (4) and (5) and to regulation 11 (restrictions on unreasonable payments), the amount of a person's eligible rates shall be the amount of the payments by way of rates referred to in paragraph (1), or, as the case may be, (2).

(4) Where a rateable unit consists partly of residential accommodation and partly of other accommodation, only such proportion of the rates payable for that rateable unit as is referable to the residential accommodation shall count as eligible rates for the purposes of these Regulations and in the application of this paragraph to Scotland the proportion so referable shall be such as may be determined by an apportionment under section 45(1) of the Water (Scotland) Act 1980⁽²⁸⁾ (apportionment of annual value of premises).

(5) Where more than one person is liable to make payments by way of rates in respect of a dwelling, the rates payable in respect of that dwelling shall be apportioned for the purposes of calculating the eligible rates for each such person having regard to all the circumstances, in particular the number of such persons and the proportion of rates paid by each such person.

(6) In a case to which regulation 6(3) applies (circumstances in which a person is to be treated as liable to make payments in respect of a dwelling), the claimant's eligible rates shall be treated as being of an amount equal to his eligible rates immediately prior to the date on which the rating authority should have made a rate.

Rent

10.—(1) Subject to the following provisions of this regulation, the payments in respect of which housing benefit is payable in the form of a rent rebate or allowance are the following periodical payments which a person is liable to make in respect of the dwelling which he occupies as his home—

- (a) payments of, or by way of, rent;
- (b) payments in respect of a licence or permission to occupy the dwelling;
- (c) payments by way of mesne profits or, in Scotland, violent profits;
- (d) payments in respect of, or in consequence of, use and occupation of the dwelling;
- (e) payments of, or by way of, service charges payment of which is a condition on which the right to occupy the dwelling depends;
- (f) mooring charges payable for a houseboat;
- (g) where the home is a caravan or a mobile home, payments in respect of the site on which it stands;

(28) 1980 c. 45.

- (h) any contribution payable by a person resident in an almshouse provided by a housing association which is either a charity of which particulars are entered in the register of charities established under section 4 of the Charities Act 1960⁽²⁹⁾ (register of charities) or an exempt charity within the meaning of that Act, which is a contribution towards the cost of maintaining that association's almshouses and essential services in them;
 - (i) payments under a rental purchase agreement, that is to say an agreement for the purchase of a dwelling under which the whole or part of the purchase price is to be paid in more than one instalment and the completion of the purchase is deferred until the whole or a specified part of the purchase price has been paid; and
 - (j) where, in Scotland, the dwelling is situated on or pertains to a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1955⁽³⁰⁾, the payment in respect of the croft land.
- (2) A rent rebate or, as the case may be, a rent allowance shall not be payable in respect of the following periodical payments:—
- (a) payments under a long tenancy except a shared ownership tenancy granted by a housing association or a housing authority;
 - (b) payments under a co-ownership scheme;
 - (c) payments by an owner;
 - (d) payments under a hire purchase, credit sale or conditional sale agreement except to the extent the conditional sale agreement is in respect of land; and
 - (e) payments by a Crown tenant.
- (3) Subject to any apportionment in accordance with paragraphs (4) and (5) and to regulations 11 and 12 (restrictions on unreasonable payments and rent increases), the amount of a person's eligible rent shall be the aggregate of such payments specified in paragraph (1) as he is liable to pay less—
- (a) except where he is separately liable for rates or charges for water, sewerage or allied environmental services, an amount determined in accordance with paragraph (6); and
 - (b) where payments include service charges which are wholly or partly ineligible, an amount in respect of the ineligible charges determined in accordance with Schedule 1.
- (4) Where the payments specified in paragraph (1) are payable in respect of accommodation which consists partly of residential accommodation and partly of other accommodation, only such proportion thereof as is referable to the residential accommodation shall count as eligible rent for the purposes of these Regulations.
- (5) Where more than one person is liable to make payments in respect of a dwelling, the payments specified in paragraph (1) shall be apportioned for the purpose of calculating the eligible rent for each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each such person.
- (6) The amount of the deduction referred to in paragraph (3) shall be—
- (a) in respect of rates—
 - (i) if the dwelling occupied by the claimant is a single rateable unit, the amount of the rates payable in respect of the rateable unit as a whole, or
 - (ii) if the dwelling comprises part only of a rateable unit, the amount treated as a payment by way of rates by virtue of regulation 9(2) (rates);
 - (b) in respect of charges for water, sewerage or allied environmental services—

⁽²⁹⁾ 1960 c. 58; subsections (8) and (10) of section 4 were amended by section 1(4) and (5) and Schedule 2 Parts I and II of the Education Act 1973 (c. 16).

⁽³⁰⁾ 1955 c. 21; section 3(1) was amended by section 14 of the Crofting Reform (Scotland) Act 1976 (c. 21).

- (i) except in a case to which head (iii) applies, if the dwelling occupied by the claimant is a single rateable unit, the amount of the charges,
 - (ii) in any other case except one to which head (iii) applies, the proportion of those charges in respect of the rateable unit of which the dwelling is part, equal to the proportion of the rates payable in respect of the rateable unit as a whole treated as payments by way of rates for which the claimant is liable under regulation 9(2) (rates), or
 - (iii) where the charges vary in accordance with the amount of water actually used, the amount which the appropriate authority considers to be fairly attributable to water, sewerage and allied environmental services, having regard to the actual or estimated consumption of the claimant.
- (7) In this regulation and Schedule 1—
- “service charges” means periodical payments for services, whether or not under the same agreement as that under which the dwelling is occupied, or whether or not such a charge is specified as separate from or separately identified within other payments made by the occupier in respect of the dwelling; and
- “services” means services performed or facilities (including the use of furniture) provided for, or rights made available to, the occupier of a dwelling.

Restrictions on unreasonable payments

11.—(1) Where a rent is registered in respect of a dwelling under Part IV or V of the Rent Act 1977⁽³¹⁾ or Part IV or VII of the Rent (Scotland) Act 1984⁽³²⁾ and the rent recoverable from a claimant is limited to the rent so registered, his eligible rent determined in accordance with regulation 10 (rent) shall not exceed the rent so registered.

- (2) Subject to paragraphs (3) and (4), where the appropriate authority considers—
- (a) that a claimant occupies a dwelling larger than is reasonably required by him and others who also occupy that dwelling (including any non-dependants of his and any person paying rent to him) having regard in particular to suitable alternative accommodation occupied by a household of the same size; or
 - (b) that the rates payable for the claimant’s dwelling are unreasonably high by comparison with the rates payable in respect of suitable alternative accommodation elsewhere; or
 - (c) that the rent payable for his dwelling is unreasonably high by comparison with the rent payable in respect of suitable alternative accommodation elsewhere,

the authority may treat the claimant’s eligible rates, or, as the case may be, eligible rent, as reduced by such amount as it considers appropriate having regard in particular to the cost of suitable alternative accommodation elsewhere and the claimant’s maximum housing benefit shall be calculated by reference to the eligible rates or eligible rent as so reduced.

- (3) If any person to whom paragraph (7) applies—
- (a) is aged 60 or over; or
 - (b) is incapable of work for the purposes of one or more of the provisions of the Social Security Act, or Part I of the Social Security and Housing Benefits Act 1982⁽³³⁾ or Part II of the Act; or
 - (c) is a member of the same household as a child or young person for whom he or his partner is responsible,

⁽³¹⁾ 1977 c. 42.

⁽³²⁾ 1984 c. 58; section 63 amended by the Housing (Consequential Provisions) Act 1985 (c. 71) Schedule 2 paragraph 59.

⁽³³⁾ 1982 c. 24.

no deduction shall be made under paragraph (2) unless suitable cheaper alternative accommodation is available and the authority considers that, taking into account the relevant factors, it is reasonable to expect the claimant to move from his present accommodation.

(4) Without prejudice to the operation of paragraph (3), but subject to paragraph (5), where the appropriate authority is satisfied that a person to whom paragraph (7) applies was able to meet the financial commitments for his dwelling when they were entered into, no deduction shall be made under paragraph (2) during the first 13 benefit weeks of the claimant's benefit period.

(5) Paragraph (4) shall not apply where a claimant was previously entitled to benefit in respect of a benefit period which fell wholly or partly less than 52 weeks before the commencement of his current benefit period.

(6) For the purposes of this regulation—

- (a) in deciding what is suitable alternative accommodation, the appropriate authority shall take account of the nature of the alternative accommodation and the facilities provided having regard to the age and state of health of all the persons to whom paragraph (7) applies and, in particular, where a claimant's present dwelling is occupied with security of tenure, accommodation shall not be treated as suitable alternative accommodation unless that accommodation will be occupied on terms which will afford security of tenure reasonably equivalent to that presently enjoyed by the claimant; and
- (b) the relevant factors in paragraph (3) are the effects of a move to alternative accommodation on—
 - (i) the claimant's prospects of retaining his employment; and
 - (ii) the education of any child or young person referred to in paragraph (3)(c) if such a move were to result in a change of school.

(7) This paragraph applies to the following persons—

- (a) the claimant;
- (b) any member of his family;
- (c) if the claimant is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household;
- (d) subject to paragraph (8), any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him.

(8) Paragraph (7)(d) shall only apply to a relative who has no separate right of occupation of the dwelling which would enable him to continue to occupy it even if the claimant ceased his occupation of it.

Restrictions on rent increases

12. Where a claimant's eligible rent is increased during a benefit period, the appropriate authority may, if it considers either—

- (a) that the increase is unreasonably high having regard in particular to the level of increases for suitable alternative accommodation, or
- (b) in the case of an increase which takes place less than 12 months after the date of the previous increase, that the increase is unreasonable having regard to the length of time since that previous increase,

treat the eligible rent as reduced either by the full amount of the increase or, if it considers that a lesser increase was reasonable in all the circumstances, by the difference between the full amount of the increase and the increase that is reasonable having regard in particular to the level

of increases for suitable alternative accommodation, and the claimant's maximum housing benefit shall be calculated by reference to the eligible rent as so reduced.

PART IV

MEMBERSHIP OF A FAMILY

Persons of prescribed description

13.—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 20(11) of the Act as it applies to housing benefit (definition of the family) is a person aged 16 or over but under 19 who is treated as a child for the purposes of section 2 of the Child Benefit Act 1975⁽³⁴⁾ (meaning of child), and in these Regulations such a person is referred to as a “young person”.

(2) Paragraph (1) shall not apply to a person who is on income support.

Circumstances in which a person is to be treated as responsible or not responsible for another

14.—(1) Subject to the following provisions of this regulation a person shall be treated as responsible for a child or young person who is normally living with him.

(2) Where a child or young person spends equal amounts of time in different households, or where there is a question as to which household he is living in, the child or young person shall be treated for the purposes of paragraph (1) as normally living with—

- (a) the person who is receiving child benefit in respect of him; or
- (b) if there is no such person—
 - (i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or
 - (ii) in any other case the person who has the primary responsibility for him.

(3) For the purposes of these Regulations a child or young person shall be the responsibility of only one person in any benefit week and any person other than the one treated as responsible for the child or young person under this regulation shall be treated as not so responsible.

Circumstances in which a person is to be treated as being or not being a member of the household

15.—(1) Subject to paragraphs (2) to (4), the claimant and any partner and, where the claimant or his partner is treated as responsible by virtue of regulation 14 (circumstances in which a person is to be treated as responsible or not responsible for another) for a child or young person, that child or young person and any child of that child or young person, shall be treated as members of the same household where any of them is absent from the dwelling occupied as his home.

(2) Paragraph (1) shall not apply to any person who is not treated as occupying the dwelling as his home because he fails to satisfy the conditions in regulation 5(8) or, as the case may be, (9) (circumstances in which a person is or is not to be treated as occupying a dwelling as his home).

(3) A child or young person shall not be treated as a member of the claimant's household where he is—

⁽³⁴⁾ 1975 c. 61, as amended by sections 4, 8 and 21 and Schedule 5 Part I of the Social Security Act 1980 (c. 30) and by section 70 of the Social Security Act 1986 (c. 50).

- (a) boarded out with the claimant or his partner under a relevant enactment; or
 - (b) boarded out with the claimant or his partner prior to adoption; or
 - (c) placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations 1983⁽³⁵⁾ or the Adoption Agencies (Scotland) Regulations 1984⁽³⁶⁾.
- (4) Subject to paragraph (5), paragraph (1) shall not apply to a child or young person who is not living with the claimant and he—
- (a) is in the care of a local authority under a relevant enactment; or
 - (b) has been boarded out with a person other than the claimant prior to adoption; or
 - (c) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations 1983 or the Adoption Agencies (Scotland) Regulations 1984.
- (5) An authority shall treat a child or young person to whom paragraph (4)(a) applies as being a member of the claimant's household in any benefit week where—
- (a) that child or young person lives with the claimant for part or all of that benefit week; and
 - (b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.
- (6) In this regulation "relevant enactment" means the Army Act 1955⁽³⁷⁾, the Air Force Act 1955⁽³⁸⁾, the Naval Discipline Act 1957⁽³⁹⁾, the Adoption Act 1958⁽⁴⁰⁾, the Matrimonial Proceedings Children Act 1958⁽⁴¹⁾, the Children Act 1958⁽⁴²⁾, the Social Work (Scotland) Act 1968⁽⁴³⁾, the Family Law Reform Act 1969⁽⁴⁴⁾, the Children and Young Persons Act 1969⁽⁴⁵⁾, the Matrimonial Causes Act 1973⁽⁴⁶⁾, the Guardianship Act 1973⁽⁴⁷⁾, the Children Act 1975⁽⁴⁸⁾, the Domestic Proceedings and Magistrates' Courts Act 1978⁽⁴⁹⁾, the Adoption (Scotland) Act 1978⁽⁵⁰⁾, the Child Care Act 1980⁽⁵¹⁾ and the Foster Children Act 1980⁽⁵²⁾.

PART V

APPLICABLE AMOUNTS

Applicable amounts

16. Subject to regulations 17, 18, 69 and 70 (polygamous marriages, patients, calculation of weekly amounts and rent or rate-free periods), a claimant's weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case:—

⁽³⁵⁾ S.I. 1983/1964.

⁽³⁶⁾ S.I. 1984/988.

⁽³⁷⁾ 1955 c. 18.

⁽³⁸⁾ 1955 c. 19.

⁽³⁹⁾ 1957 c. 53.

⁽⁴⁰⁾ 1958 c. 5.

⁽⁴¹⁾ 1958 c. 40.

⁽⁴²⁾ 1958 c. 65.

⁽⁴³⁾ 1968 c. 49.

⁽⁴⁴⁾ 1969 c. 46.

⁽⁴⁵⁾ 1969 c. 54.

⁽⁴⁶⁾ 1973 c. 18.

⁽⁴⁷⁾ 1973 c. 29.

⁽⁴⁸⁾ 1975 c. 72.

⁽⁴⁹⁾ 1978 c. 22.

⁽⁵⁰⁾ 1978 c. 28.

⁽⁵¹⁾ 1980 c. 5.

⁽⁵²⁾ 1980 c. 6.

- (a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1(1), (2) or (3), as the case may be, of Schedule 2;
- (b) an amount determined in accordance with paragraph 2 of Schedule 2 in respect of any child or young person who is a member of his family, except a child or young person whose capital, if calculated in accordance with Chapter VI of Part VI (income and capital) in like manner as for the claimant, except where otherwise provided, would exceed £3,000;
- (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 Part II of Schedule 2 (family premium);
- (d) the amount of any premiums which may be applicable to him, determined in accordance with Parts III and IV of Schedule 2 (premiums).

Polygamous marriages

17. Subject to regulations 18, 69 and 70 (patients, calculation of weekly amounts and rent or rate-free periods), where a claimant is a member of a polygamous marriage, his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

- (a) the highest amount applicable to him and one of his partners determined in accordance with paragraph 1(3) of Schedule 2 as if he and that partner were a couple;
- (b) an amount equal to the difference between the amounts specified in sub-paragraphs (3)(b) and (1)(c) of paragraph 1 of Schedule 2 in respect of each of his other partners;
- (c) an amount determined in accordance with paragraph 2 of Schedule 2 (applicable amounts) in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household, except a child or young person whose capital, if calculated in accordance with Chapter VI of Part VI (income and capital) in like manner as for the claimant except where otherwise provided, would exceed £3,000;
- (d) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part II of Schedule 2 (family premium);
- (e) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 2 (premiums).

Patients

18.—(1) Subject to regulations 69 and 70 (calculation of weekly amounts and rent or rate-free periods), where a person has been a patient for a period of more than 6 weeks—

- (a) in the case of a single claimant, his applicable amount shall be £8.25;
- (b) in the case of a lone parent, his applicable amount shall be £8.25 plus any amount applicable to him under regulation 16(b) or (c) or (d) (applicable amounts) by virtue of his satisfying the condition specified in paragraphs 8 or 14 of Schedule 2;
- (c) in the case of a married or unmarried couple—
 - (i) where the other member is not a patient, or has not been a patient for more than six weeks, his or, if he is not the claimant, the claimant's applicable amount shall be the amount applicable under regulation 16 (applicable amounts) reduced by £8.25;
 - (ii) where the other member has also been a patient for more than six weeks, his or, as the case may be, the claimant's applicable amount shall be £16.50 plus any amounts applicable under regulation 16(b) or (c) or (d) by virtue of his satisfying the condition specified in paragraph 14 of Schedule 2;

(d) if he is polygamously married:—

- (i) where at least one member of the polygamous marriage is not a patient, or has not been a patient for more than six weeks, the applicable amount under regulation 17 (polygamous marriages) shall be reduced by £8.25 in respect of each such member who is a patient;
- (ii) where all the members of the polygamous marriage have been patients for more than six weeks, the applicable amount shall be £8.25 in respect of each member plus any amounts applicable under regulation 17(c) or (d) or (e) by virtue of his satisfying the condition specified in paragraph 14 of Schedule 2.

(2) In paragraph (1), “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975⁽⁵³⁾.

(3) 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.

PART VI

INCOME AND CAPITAL

CHAPTER I

general

Calculation of income and capital of members of claimant’s family and of a polygamous marriage

19.—(1) The income and capital of a claimant’s partner and, subject to paragraph (2) and to regulation 36 (modifications in respect of children and young persons), the income of a child or young person which by virtue of section 22(5) of the Act is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the “claimant” shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to his partner or that child or young person.

(2) Regulations 29(2) and 31(2), so far as they relate to paragraphs 1 to 10 of Schedule 3 (sums to be disregarded in the calculation of earnings), and regulation 34(1) (capital treated as income) shall not apply to a child or young person.

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

- (a) the claimant shall be treated as possessing capital and income belonging to each such member and the income of any child or young person who is one of that member’s family; and
- (b) the income and capital of that member or, as the case may be, the income of that child or young person shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant or, as the case may be, as for any child or young person who is a member of his family.

⁽⁵³⁾ S.I. [1975/555](#); the relevant amending instruments are S.I. [1977/1693](#) and [1987/1683](#).

Circumstances in which income of non-dependant is to be treated as claimant's

20.—(1) Where it appears to the appropriate authority that a non-dependant and the claimant have entered into arrangements in order to take advantage of the housing benefit scheme and the non-dependant has more capital and income than the claimant, that authority shall, except where the claimant is on income support, treat the claimant as possessing capital and income belonging to that non-dependant and, in such a case, shall disregard any capital and income which the claimant does possess.

(2) Where a claimant is treated as possessing capital and income belonging to a non-dependant under paragraph (1) the capital and income of that non-dependant shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant and any reference to the “claimant” shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to that non-dependant.

CHAPTER II**income****Calculation of income on a weekly basis**

21.—(1) Subject to regulations 26 (disregard of changes in tax, contributions etc), and 69 and 70 (calculation of weekly amounts and rent or rate free periods) for the purposes of section 20(7)(c) of the Act (conditions of entitlement to housing benefit) the income of a claimant shall be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be his average weekly income over the benefit period in accordance with this Chapter and Chapters III to V of this Part; and
- (b) by adding to that amount the weekly income calculated under regulation 45 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) “income” includes income derived under regulations 27(3), 34 and 35 (charitable or voluntary payments, capital treated as income and notional income).

Average weekly earnings of employed earners

22.—(1) Where a claimant’s income consists of earnings from employment as an employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment—

- (a) over a period immediately preceding the benefit week in which the claim is made or treated as made and being a period of—
 - (i) 5 weeks, if he is paid weekly; or
 - (ii) 2 months, if he is paid monthly; or
- (b) whether or not sub-paragraph (a)(i) or (ii) applies, where a claimant’s earnings fluctuate, over such other period preceding the benefit week in which the claim is made or treated as made as may, in any particular case, enable his average weekly earnings over the benefit period to be estimated more accurately.

(2) Where the claimant has been in his employment for less than the period specified in paragraph (1)(a)(i) or (ii)—

- (a) if he has received any earnings for the period that he has been in that employment and those earnings are likely to represent his average weekly earnings from that employment his average weekly earnings shall be estimated by reference to those earnings;
- (b) in any other case, the appropriate authority shall require the claimant’s employer to furnish an estimate of the claimant’s likely weekly earnings over such period as the appropriate

authority may require and the claimant's average weekly earnings shall be estimated by reference to that estimate.

(3) Where the amount of a claimant's earnings changes during a benefit period the appropriate authority shall estimate his average weekly earnings by reference to his likely earnings from the employment over the remainder of the benefit period.

(4) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Chapter III of this Part.

Average weekly earnings of self-employed earners

23.—(1) Where a claimant's income consists of earnings from employment as a self-employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment over such period as is appropriate in order that his average weekly earnings over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks.

(2) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Chapter IV of this Part.

Average weekly income other than earnings

24.—(1) A claimant's income which does not consist of earnings shall, except where paragraph (2) or regulation 27(4) (weekly amount of charitable or voluntary payment) applies, be estimated over such period as is appropriate in order that his average weekly income over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks; and nothing in this paragraph shall authorise an authority to disregard any such income other than that specified in Schedule 4.

(2) The period over which any benefit under the benefit Acts⁽⁵⁴⁾ is to be taken into account shall be the period in respect of which that benefit is payable.

(3) For the purposes of this regulation income other than earnings shall be calculated in accordance with Chapter V of this Part.

Calculation of weekly income

25. For the purposes of regulations 22 to 24 (average weekly income), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in any other case, by dividing the amount of the payment by the number equal to the number of days in the period to which it relates and multiplying the quotient by 7.

Disregard of changes in tax, contributions etc.

26. 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;

⁽⁵⁴⁾ The benefit Acts are specified in section 84(1) of the Social Security Act 1986 (c. 50).

- (c) in the rates of social security contributions payable under the Social Security Act or in the lower earnings limit or weekly earnings figures for Class 1 contributions under that Act;
- (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 that Act,

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

Treatment of charitable or voluntary payments

27.—(1) Any charitable or voluntary payment, other than one which is or is due to be made at regular intervals or one which is made by a person for the maintenance of any member of his family or of his former partner or of his children, made to the claimant on or after the date of claim shall be calculated in accordance with the following provisions of this regulation; and for the purposes of this regulation any such payment made to a member of the claimant's family or to a person whose income and capital he is treated as possessing under regulation 19(3) (calculation of income and capital of members of the claimant's family, and of a polygamous marriage) shall be treated as a payment made to the claimant and shall be disregarded in calculating the income or capital of that member or that person.

(2) The first £250, whether in aggregate or otherwise, of any such payments made in the period of 52 weeks beginning with the date on which the first payment is made shall be taken into account as capital under Chapter VI of this Part and to the extent that it is not a payment of capital shall be treated as capital.

(3) Any such payments in the period of 52 weeks in excess of £250 shall be taken into account as income under Chapter V of this Part and to the extent that it is not a payment of income shall be treated as income.

(4) The weekly amount of any charitable or voluntary payment which is to be taken into account under paragraph (3) as income shall be determined as follows—

- (a) in a case where the first payment exceeds the limit of £250, the excess shall be divided by 52; and the resulting amount treated as weekly income for a period of 52 weeks beginning on the date on which that payment was made;
- (b) in a case where any subsequent payment in aggregate with earlier payments first exceeds that limit, the excess shall be divided by the number equal to the number of weeks (including any part of a week) in the interval beginning with the date of that payment to the end of the period of 52 weeks; and the resulting amount treated as weekly income for each week in that interval; and
- (c) any payment made after that specified in either sub-paragraph (a) or (b) shall be divided by the number equal to the number of weeks (including any part of a week) in the interval beginning with the date of that payment to the end of the period of 52 weeks; and the resulting amount treated as weekly income for each week in that interval.

(5) In the case of a claimant who continues to be in receipt of housing benefit at the end of the period of 52 weeks, the foregoing provisions of this regulation shall continue to apply thereafter with the modification that any subsequent period of 52 weeks shall begin from the date on which the first payment is made after the end of the previous period of 52 weeks.

CHAPTER III

employed earners

Earnings of employed earners

28.—(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 or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;
 - (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
 - (e) any payment by way of a retainer;
 - (f) any payment made by the 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) any award of compensation made under section 68(2) or 71(2)(a) of the Employment Protection (Consolidation) Act 1978⁽⁵⁵⁾ (remedies and compensation for unfair dismissal);
 - (h) any such sum as is referred to in section 18(2) of the Social Security (Miscellaneous Provisions) Act 1977⁽⁵⁶⁾ (certain sums to be earnings for social security purposes);
 - (i) any statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982⁽⁵⁷⁾ or statutory maternity pay under Part V of the Act.
- (2) Earnings shall not include—
- (a) any payment in kind;
 - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (c) any occupational pension.

Calculation of net earnings of employed earners

29.—(1) For the purposes of regulation 22 (average weekly earnings of employed earners), 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 paragraph (2), be his net earnings.

⁽⁵⁵⁾ 1978 c. 44; section 68(2) was amended by section 21 Schedule 3 paragraph 21 of the Employment Act 1982 (c. 46); section 71(2) was amended by sections 5 and 21, Schedule 3 paragraph 22 and Schedule 4 of the Employment Act 1982.

⁽⁵⁶⁾ 1977 c. 5; section 18(2) was amended by section 159 Schedule 16 paragraph 29 of the Employment Protection (Consolidation) Act 1978 (c. 44) and by section 86(2) of, and Schedule 10 Part IV paragraph 75 and Schedule 11 to, the Social Security Act 1986 (c. 50).

⁽⁵⁷⁾ 1982 c. 24.

(2) There shall be disregarded from a claimant's net earnings, any sum, where applicable, specified in paragraphs 1 to 11 of Schedule 3.

(3) For the purposes of paragraph (1) net earnings shall, except where paragraph (4) applies, 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 Social Security Act(58); and
- (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.

(4) Where the earnings of a claimant are estimated under paragraph (2) of regulation 22 (average weekly earnings of employed earners), 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 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 8(1) and (2) and 14(1)(a) and (2) of the Income and Corporation Taxes Act 1970 (personal relief)(59) as is appropriate to his circumstances but, if the assessment period is less than a year, the amount of the personal relief deductible under this sub-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 pensions scheme.

CHAPTER IV

self-employed earners

Earnings of self-employed earners

30. “Earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and shall include any allowance paid under section 2 of the Employment and Training Act 1973(60) to the claimant for the purpose of assisting him in carrying on his business.

(58) See sections 1(2) and 4 of the Social Security Act 1975 (c. 14): section 4 was amended by the Social Security Pensions Act 1975 (c. 60), Schedule 4 paragraph 36(a), the Education (School-Leaving Dates) Act 1976 (c. 5), Section 2(4), the Social Security Act 1979 (c. 18), section 14(1), the Social Security and Housing Benefits Act 1982 (c. 24), Schedule 5, the Social Security Act 1985 (c. 53), sections 7(1) and (2) and 8(1) and the Social Security Act 1986 (c. 50), section 74(1)(a) and (2) and Schedule 10, paragraph 104, article 2 of S.I. 1986/25 and article 2 of S.I. 1987/46.

(59) 1970 c. 10; section 8(1) was amended by the Finance Act 1971 (c. 68) section 37 Schedule 6 paragraphs 1 and 5, and the Finance Act 1985 (c. 54) section 36, sub-section (1A) was added by the Finance (No. 2) Act 1975 (c. 45) section 31 and amended by the Finance Act 1977 (c. 36) section 22 and the Finance Act 1985 section 36. Sub-section (1B) was added by the Finance (No. 2) Act 1975 section 31 and amended by the Finance Act 1985 section 36. Section 8(2) was amended by the Finance Act 1971 Section 37 Schedule 6 paragraphs 1 and 5 and article 2 of S.I. 1985/430; sub-paragraph (b) was substituted by the Finance (No. 2) Act 1979 (c. 47) section 12 Schedule 2 paragraph 1; sub-paragraph (b)(i) and (ii) was amended by the Finance Act 1981 (c. 35) section 139 Schedule 19 Part VI and the Finance Act 1982 (c. 39) section 157 Schedule 22 Part IV; sub-paragraph (b)(iii) was added by the Finance Act 1981 (c. 35) section 27 and sub-paragraph (b)(iv) by the Finance Act 1987 (c. 16) section 27. Section 14(1) was amended by the Finance Act 1970 (c. 24) section 14 Schedule 8 Part VI; section 14(2) was amended by the Finance Act 1976 (c. 40) section 36, the Finance (No. 2) Act 1979 (c. 47) section 11 Schedule 1 section 24 paragraph 2 and the Finance Act 1980 (c. 48) section 24.

(60) 1973 c. 50; section 2 was amended by sections 9 and 11 and Schedule 2 Part II paragraph 9 and Schedule 3 of the Employment and Training Act 1981 (c. 57).

Calculation of net profit of self-employed earners

31.—(1) For the purposes of regulation 23 (average weekly earnings of self-employed earners) 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 or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975⁽⁶¹⁾, 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 Social Security Act calculated in accordance with regulation 32 (deduction of tax and contributions for self-employed earners); and
 - (ii) one-half of any qualifying premium payable.

(2) There shall be disregarded from a claimant's net profit, any sum, where applicable, specified in paragraphs 1 to 11 of Schedule 3.

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

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax; and
 - (ii) social security contributions payable under the Social Security Act,

calculated in accordance with regulation 32 (deduction of tax and contributions for self-employed earners); and

- (c) one-half of any qualifying premium payable.

(4) 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 (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

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

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

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

- (a) the replacement in the course of business of equipment or machinery; and

(61) S.I. 1975/529.

- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (7) The appropriate authority shall refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.
- (8) For the avoidance of doubt—
 - (a) a deduction shall not be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
 - (b) a deduction shall be made thereunder in respect of—
 - (i) the excess of any value added tax paid 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.
- (9) 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 Social Security Act, calculated in accordance with regulation 32 (deduction of tax and contributions for self-employed earners); and
 - (b) one-half of any qualifying premium payable.
- (10) 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.
- (11) In this regulation “qualifying premium” means any premium or other consideration payable under an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision for the claimant of a life annuity in old age or the provision of an annuity for his partner or for any one or more of his dependants and in respect of which relief for income tax may be given.

Deduction of tax and contributions for self-employed earners

- 32.**—(1) The amount to be deducted in respect of income tax under regulation 31(1)(b)(i), (3)(b)(i) or (9)(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 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 8(1) and (2) and 14(1)(a) and (2) of the Income and Corporation Taxes Act 1970⁽⁶²⁾ (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the amount of the personal relief deductible under this paragraph shall be calculated on a pro-rata basis.
- (2) The amount to be deducted in respect of social security contributions under regulation 31(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of—

(62) 1970 c. 10.

- (a) the amount of Class 2 contributions payable under section 7(1) or, as the case may be, (4) of the Social Security Act(63) except where the claimant's chargeable income is less than the amount for the time being specified in section 7(5) of that Act(64) (small earnings exception); and
 - (b) the amount of Class 4 contributions (if any) which would be payable under section 9 of that Act(65) (Class 4 contributions recoverable under Tax Acts) in respect of profits or gains equal to the amount of that income.
- (3) In this regulation "chargeable income" means—
- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 31;
 - (b) in the case of employment as a child minder, one third of the earnings of that employment.

CHAPTER V

other income

Calculation of income other than earnings

33.—(1) For the purposes of regulation 24 (average weekly 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 regulation 27(3) and 34 (charitable or voluntary payments and capital treated as income).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1), any sum, where applicable, specified in Schedule 4.

(3) Where the payment of any benefit under the benefit Acts 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 28(2) applies (payments not earnings).

Capital treated as income

34.—(1) Any capital payable by instalments which are outstanding at the date on which the claim is made or treated as made, or, at 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 exceeds £6,000, be treated as income.

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

Notional income

35.—(1) A claimant 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.

(2) 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 would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by the claimant but only from the date on which it could be expected to be acquired were an application made.

(63) Section 7(1) was amended by section 2(4) of the Education (School-Leaving Dates) Act 1976 (c. 5), section 17(1) of the Health and Social Security Act 1984 (c. 48), and article 3 of S.I. 1986/25 and article 3 of S.I. 1987/46.

(64) Section 7(5) was amended by article 3 of S.I. 1986/25 and S.I. 1987/46.

(65) Section 9 was amended by sections 4 and 65 of and Schedule 5 to, the Social Security Pensions Act 1975 (c. 60); by the Social Security Contributions Act 1982 (c. 2), section 1 and by S.I. 1986/25.

(3) 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 as possessed by that member to the extent that it is used for his food, clothing, footwear, fuel, eligible rent or rates or both;
- (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.

(4) 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 appropriate 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.

(5) Where—

- (a) a claimant performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area; and
- (c) the appropriate authority is not satisfied that the means of that person are insufficient for him to pay or to pay more for the service,

the appropriate authority shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary body or is a volunteer if the appropriate authority is satisfied that it is reasonable for him to provide his services free of charge.

(6) 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.

(7) Where a claimant is treated as possessing any earnings under paragraph (5) 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 29 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account those earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings 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 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 assessment period is less than a year the amount of the personal relief deductible under this sub-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.

Modifications in respect of child and young person

36.—(1) Where the income of a child or young person calculated in accordance with the foregoing provisions of this Part exceeds the amount included under Schedule 2 in the calculation of the claimant's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any, the excess shall not be treated as income of the claimant.

(2) Where the capital of a child or young person, if calculated in accordance with Chapter VI 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.

(3) In calculating the net earnings or net profit of a child or young person there shall be disregarded any sum specified in paragraphs 13 and 14 (in addition to any sum which falls to be disregarded under paragraphs 11 and 12) of Schedule 3.

(4) Any income of a child or young person which is to be disregarded under Schedule 4 shall be disregarded in such manner as to produce the result most favourable to the claimant.

CHAPTER VI

capital

Capital limit

37. For the purposes of section 22(6) of the Act as it applies to housing benefit (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £6,000.

Calculation of capital

38.—(1) For the purposes of Part II of the 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 and any income treated as capital under regulations 27(2) and 40 (treatment of charitable or voluntary payments and income treated as capital).

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1), any capital, where applicable, specified in Schedule 5.

Disregard of capital of child or young person

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

Income treated as capital

40.—(1) Any annual bounty derived from employment to which paragraph 6 of Schedule 3 applies shall be treated as capital.

(2) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 28(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4, 7 or 13 of Schedule 5, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer shall be treated as capital.

Calculation of capital in the United Kingdom

41. 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 a 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

42. 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

43.—(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.

(2) Except in the case of—

- (a) a discretionary trust; or
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 5,

any capital 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 could be expected to be acquired were an application made.

(3) Any payment of capital 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 as possessed by that member to the extent that it is used for his food, clothing, footwear, fuel, eligible rent or rates or both;
- (b) to a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that member to the extent that it is kept by him or used on behalf of any member of the family.

(4) 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 may be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 38 (calculation of capital) be disregarded; and
- (b) he shall, subject to paragraph (5), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of 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.

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

(6) Where a claimant is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of this Chapter shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

Capital jointly held

44. Except where a claimant possesses capital which is disregarded under regulation 43(4) (notional capital) where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share.

Calculation of tariff income from capital

45.—(1) Where the claimant's capital calculated in accordance with this Part exceeds £3,000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £3,000 but not exceeding £6,000.

(2) Notwithstanding paragraph (1) where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly tariff income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulations 27(2) and 40 (charitable or voluntary payments and income treated as capital).

PART VII

STUDENTS

CHAPTER I

general

Interpretation

46. In this Part, unless the context otherwise requires: —

“contribution” means any contribution in respect of the income of any other person which a Minister of the Crown or an education authority takes into account in assessing the amount of the student's grant and by which that amount is, as a consequence, reduced;

“course of study” means any full-time or part-time course of study or sandwich course whether or not a grant is made for attending it;

“covenant income” means the gross income payable to a full-time student under a Deed of Covenant by his parent including any sum deducted from the gross amount for tax;

“education authority” means a government department, a local education authority as defined in section 114(1) of the Education Act 1944⁽⁶⁶⁾ (interpretation), an education authority as defined in section 135(1) of the Education (Scotland) Act⁽⁶⁷⁾ (interpretation), an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986⁽⁶⁸⁾, any body which is a research council for the purposes of the Science and Technology Act 1965⁽⁶⁹⁾ or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Great Britain;

“full-time student” includes a student on a sandwich course;

“grant” means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary;

“grant income” means—

- (a) any income by way of a grant;
- (b) any contribution whether or not it is paid;

“period of study” means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course to the end,
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, the period beginning with the start of the course or, as the case may be, that year’s start and ending with either—
 - (i) in a case where the student’s grant is assessed at a rate appropriate to his studying throughout the year, or, if he does not have a grant, where it would have been assessed at such a rate had he had one, the day before the start of the next year of the course, or
 - (ii) in any other case, the day before the start of the recognised summer vacation appropriate to his course;

“periods of experience” has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1987⁽⁷⁰⁾;

“sandwich course” has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1987;

“standard maintenance grant” means—

- (a) in the case of a student attending a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 1987 for such a student; and
- (b) in any other case, the amount specified in paragraph 2(2) other than in sub-paragraph (a) or (b) thereof;

“student” means a person who is attending a course of study at an educational establishment; and a person who has started on such a course shall be treated as attending it throughout any period of term or vacation within it, until the end of the course or such earlier date as he abandons it or is dismissed from it.

(66) 1944 c. 31, as amended by S.I. 1974/595 article 3(22) Schedule 1 Part I and by S.I. 1977/293, article 4(1).

(67) 1980 c. 44.

(68) S.I. 1986/594 (N.I. 3).

(69) 1965 c. 4.

(70) S.I. 1987/1261.

Treatment of students

47. The provisions of Parts II, III and IV (entitlement to housing benefit, payments in respect of a dwelling, membership of a family) shall have effect in relation to students subject to the following provisions of this Part.

CHAPTER II

entitlement and payments in respect of a dwelling

Occupying a dwelling as a person's home

48.—(1) Subject to paragraph (2), a full-time student shall not be treated as occupying a dwelling as his home during any benefit week outside the period of study if he is absent from it for the whole of that week and if the main purpose of his occupation during the period of study would be to facilitate attendance on his course.

(2) The provisions of paragraph (1) shall not apply to any absence occasioned by the need to enter hospital for treatment.

Circumstances in which certain students are to be treated as not liable to make payments in respect of a dwelling

49.—(1) Except in the case of a student who is a person on income support, a student with limited leave or without leave to enter or remain in the United Kingdom shall, for the purposes of these Regulations, be treated as if he were not liable to make payments in respect of a dwelling.

(2) For the purpose of paragraph (1) “student with limited leave or without leave to enter or remain in the United Kingdom” means a person who is present in the United Kingdom for the purpose of attending a course of education, whether or not he is for the time being engaged in a programme of studies, and who—

- (a) is a person other than a national of a member State or a person to whom the European Convention on Social and Medical Assistance done in Paris on 11th December 1953⁽⁷¹⁾ applies, who has a limited leave (as defined in section 33(1) of the Immigration Act 1971⁽⁷²⁾) to enter or remain in the United Kingdom which has been given in accordance with any provision of immigration rules (as defined in section 33(1) of that Act) which refers to there being, or to there needing to be, no recourse to public funds, or to there being no charge on public funds, during that limited leave; or
- (b) having a limited leave (as defined in section 33(1) of the Immigration Act 1971) to enter or remain in the United Kingdom, has remained without further leave under that Act beyond the time limited by the leave; or
- (c) is the subject of a deportation order, that is to say an order within section 5(1) of the Immigration Act 1971 (procedure relating to deportation) requiring him to leave and prohibiting him from entering the United Kingdom; or
- (d) is adjudged by the immigration authorities to be an illegal entrant (as defined in section 33(1) of the Immigration Act 1971) who has not subsequently been given leave under that Act to enter or remain in the United Kingdom.

⁽⁷¹⁾ Cmnd. 9512.

⁽⁷²⁾ 1971 c. 77, as amended by section 39 and Schedule 4 of the British Nationality Act 1981 (c. 61).

Eligible housing costs

50.—(1) Subject to paragraphs (2) and (3), housing benefit shall not be payable during the period of study in respect of payments made by a student to an educational establishment which the student is attending.

(2) Where the educational establishment itself pays rent for the dwelling occupied by the student as his home to a third party (other than to another educational establishment) the provisions of paragraph (1) shall only apply if rent is payable under the terms of a long tenancy or to an education authority which has provided the dwelling in exercise of its functions as an education authority.

(3) Where it appears to the appropriate authority that an educational establishment has arranged for accommodation to be provided by a person or body other than itself in order to take advantage of the housing benefit scheme, housing benefit shall not be payable during the period of study in respect of payments made to that person or body by a student.

Eligible rent

51.—(1) In the case of a full-time student, for the purpose of calculating his eligible rent during the period of study, the amount of rent he is liable to pay shall be reduced (in addition to any other deductions which may be appropriate) by the following weekly amounts—

(a) in the case of a full-time student attending a course at the University of London or at an establishment within the area comprising the City of London and the Metropolitan Police District, £17.80; and

(b) in the case of any other full-time student, £13.60.

(2) Paragraph (1) shall not apply to a student—

(a) who is a person on income support; or

(b) who is receiving an allowance payable by or on behalf of the Manpower Services Commission to a person for his maintenance or in respect of any child or young person; or

(c) whose income is less than the aggregate of his applicable amount and the amount of the deduction under paragraph (1) which would otherwise be applicable and either—

(i) his applicable amount includes the lone parent premium or the disability premium, or

(ii) he has a partner who is not also a full-time student; or

(d) who is a student on a sandwich course during one of his periods of experience.

Student partners

52. Where a claimant is not, but his partner is, a student, the provisions of regulations 50 and 51 (eligible housing costs and eligible rent) shall apply as if the claimant were a student.

CHAPTER III**income****Calculation of grant income**

53.—(1) The amount of a student's grant income to be taken into account shall, subject to paragraph (2), be the whole of his grant income.

(2) There shall be excluded from a student's grant income any payment—

(a) intended to meet tuition fees or examination fees;

(b) intended to meet the cost of special equipment for a student on a course which began before 1st September 1986 in architecture, art and design, home economics, landscape

architecture, medicine, music, ophthalmic optics, orthoptics, physical education, physiotherapy, radiography, occupational therapy, dental hygiene, dental therapy, remedial gymnastics, town and country planning and veterinary science or medicine;

- (c) in respect of the student's disability;
 - (d) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
 - (e) on account of the student maintaining a home at a place other than that at which he resides during his course;
 - (f) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of him;
 - (g) intended to meet the cost of books and equipment (other than special equipment) or, in the case of a full-time student, if not so intended an amount equal to £210 towards such costs;
 - (h) intended to meet travel expenses incurred as a result of his attendance on the course.
- (3) A student's grant income shall be apportioned—
- (a) subject to paragraph (4), in a case where it is attributable to the period of study, equally between the weeks in that period,
 - (b) in any other case, equally between the weeks in the period in respect of which it is payable.
- (4) In the case of a student on a sandwich course, any periods of experience within the period of study shall be excluded and the student's grant income shall be apportioned equally between the remaining weeks in that period.

Calculation of covenant income where a contribution is assessed

54.—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of his covenant income to be taken into account for that period and any summer vacation immediately following shall be the whole amount of the covenant income less, subject to paragraph (3), the amount of the contribution and the amount deducted by way of tax in respect of that income.

- (2) The weekly amount of the student's covenant income shall be determined—
- (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or 53, whichever is reasonable in the circumstances; and
 - (b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution shall be treated as increased by the amount (if any) by which the amount excluded under regulation 53(2)(h) (calculation of grant income) falls short of the amount included in the standard maintenance grant to meet travel expenses.

Covenant income where no grant income or no contribution is assessed

55.—(1) Where a student is not in receipt of income by way of a grant the amount of his covenant income shall be calculated as follows—

- (a) any sums intended for any expenditure specified in regulation 53(2)(a) to (f) (calculation of grant income) necessary as a result of his attendance on the course shall be disregarded;
- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded, shall be apportioned equally between the weeks of the period of study;
- (c) there shall be disregarded from the amount so apportioned the amount which would have been disregarded under regulation 53(2)(g) and (h) (calculation of grant income) had the student been in receipt of the standard maintenance grant;

- (d) there shall be deducted from any amount in excess of the sums in sub-paragraphs (a) and (b) the amount deducted by way of tax in respect of the covenanted income; and
 - (e) the balance, if any, shall be divided by 52 or 53 whichever is reasonable in the circumstances and treated as weekly income of which £5 shall be disregarded.
- (2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenanted income shall be calculated in accordance with sub-paragraphs (a) to (e) of paragraph (1), except that—
- (a) the value of the standard maintenance grant shall be abated by the amount of such grant income less an amount equal to the amount of any sums disregarded under regulation 53(2)(a) to (f); and
 - (b) the amount to be disregarded under paragraph (1)(c) shall be abated by an amount equal to the amount of any sums disregarded under regulation 53(2)(g) and (h).

Relationship with amounts to be disregarded under Schedule 4

56. No part of a student's covenant income or grant income shall be disregarded under paragraph 13 of Schedule 4 and any other income shall be disregarded thereunder only if, and to the extent that, the amount disregarded under regulation 54(2)(b) (calculation of covenant income where a contribution is assessed) or, as the case may be, 55(1)(e) (covenant income where no grant income or no contribution is assessed) is less than £5.

Other amounts to be disregarded

57. For the purposes of ascertaining income other than grant income and covenant income, any amounts intended for any expenditure specified in regulation 53(2) (calculation of grant income), necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 53(2), 54(3) or 55(1)(a) or (c) (calculation of grant and covenant income) on like expenditure.

Disregard of contribution and rent

58.—(1) Where the claimant or his partner is a student and the income of one is taken into account for the purposes of assessing a contribution to the student's grant, an amount equal to the contribution shall be disregarded for the purposes of calculating the income of the one liable to make that contribution.

(2) In ascertaining the weekly income of a student during the period of study there shall be disregarded an amount equal to the amount by which his rent is reduced under regulation 51(1) (eligible rent) or if he has no income or his income is less than the amount to be so disregarded a deduction shall be made from the income of his partner (if any) but only to the extent of the difference.

Income treated as capital

59. Any amount by way of a refund of tax deducted from a student's covenant income shall be treated as capital.

Disregard of changes occurring during summer vacation

60. In calculating a student's income the appropriate authority shall disregard any change in the standard maintenance grant, occurring in the recognised summer vacation appropriate to the

student's course, if that vacation does not form part of his period of study from the date on which the change occurred to the end of that vacation.

PART VIII

AMOUNT OF BENEFIT

Maximum housing benefit

- 61.** The amount of a person's maximum housing benefit in any benefit week shall be—
- (a) 100% of his eligible rent calculated on a weekly basis in accordance with regulations 69 and 70 (calculation of weekly amounts and rent or rate-free periods); and
 - (b) 80% of his eligible rates calculated on a weekly basis in accordance with those regulations,

less, in either case, any deductions in respect of non-dependants which fall to be made under regulation 63 (non-dependant deductions).

Housing Benefit tapers

62. The prescribed percentages for the purpose of sub-section (5) of section 21 of the Act (percentage of excess of income over applicable amount which is deducted from maximum housing benefit) shall be—

- (a) in calculating the amount of a rate rebate, 20%; and
- (b) in calculating the amount of a rent rebate or allowance, 65%.

Non-dependant deductions

63.—(1) Subject to the following provisions of this regulation, the deductions referred to in regulation 61 (maximum housing benefit) shall be—

- (a) in respect of a non-dependant aged 18 or over who is in remunerative work or who is a boarder—
 - (i) in calculating the amount of a rent rebate or allowance, £8.20 per week;
 - (ii) in calculating the amount of a rate rebate, £3.00 per week;
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply—
 - (i) in calculating the amount of a rent rebate or allowance, £3.45 per week;
 - (ii) in calculating the amount of a rate rebate, £3.00 per week.

(2) In the case of a non-dependant aged 18 or over to whom paragraph (1)(a) applies because he is in remunerative work, where it is shown to the appropriate authority that his normal weekly gross income is less than £49.20, the deductions to be made under this regulation shall be the deductions specified in paragraph (1)(b).

(3) Only one deduction shall be made under this regulation in respect of a married or unmarried couple or, as the case may be, members of a polygamous marriage and, where a different amount or no amount would, but for this paragraph, fall to be deducted in respect of the members of the couple or polygamous marriage as individuals, the higher deduction shall be made.

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

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

(6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—

- (a) blind or treated as blind by virtue of paragraph 12 of Schedule 2 (additional condition of the higher pensioner and disability premiums); or
- (b) receiving attendance allowance.

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

- (a) although he resides with the claimant, it appears to the appropriate authority that his normal home is elsewhere; or
- (b) he is in receipt of a training allowance paid in connection with a Youth Training Scheme established under section 2 of the Employment and Training Act 1973(73) and is not a boarder; or
- (c) he is a full-time student during a period of study within the meaning of Part VII (Students) and is not a boarder.

(8) Except in the case of a boarder aged 18 or over, no deduction shall be made in calculating the amount of a rent rebate or allowance in respect of a single non-dependant aged less than 25 who is on income support.

Minimum housing benefit

64.—(1) Where housing benefit is payable in the form of a rate rebate, it shall not be payable where the amount to which a person would otherwise be entitled is less than 50 pence per benefit week.

(2) Where housing benefit is payable in the form of a rent rebate or allowance, it shall not be payable where the amount to which a person would otherwise be entitled is less than 50 pence per benefit week.

PART IX

CALCULATION OF WEEKLY AMOUNTS AND CHANGES OF CIRCUMSTANCES

Date on which entitlement is to commence

65.—(1) Subject to regulations 72(12) to (14) (renewal claims) and paragraph (2), a person who makes a claim and is otherwise entitled to housing benefit shall be entitled to that benefit from the benefit week following the date on which his claim is or is treated as made.

(2) Where a claimant is otherwise entitled to housing benefit and becomes liable, for the first time, to make payments in respect of the dwelling which he occupies as his home in the benefit week in which his claim is or is treated as made, he shall be so entitled from that benefit week.

(73) 1973 c. 50. Section 2 was amended by the Employment and Training Act 1981 (c. 57) sections 9 and 11, Schedule 2, Part II, paragraph 9 and Schedule 3.

Benefit period

66.—(1) Where a person is entitled to housing benefit the appropriate authority shall make an award for a specified period (“the benefit period”) commencing with—

- (a) the first benefit week in respect of which he is so entitled; or if later
- (b) the benefit week in which the claim is received at the designated office.

(2) The benefit period shall be such number of benefit weeks as the appropriate authority shall determine having regard in particular to any relevant circumstances which the appropriate authority reasonably expects may affect entitlement in the future.

(3) Subject to paragraph (4), the benefit period shall not exceed 60 benefit weeks.

(4) Where a claimant either is on income support or, although not in receipt thereof, has included in the calculation of his applicable amount the disability premium, the severe disability premium or the higher pensioner premium, and a claim for a further award of housing benefit has not been made by the last benefit week of his benefit period, the appropriate authority may extend the current benefit period by not more than 4 benefit weeks.

Date on which benefit period is to end

67. The benefit period shall end with the last day of the final week of that period, determined by the appropriate authority in accordance with regulation 66(2) to (4) (benefit period) unless—

- (a) the claimant is a person on income support and he ceases to be so entitled, or
- (b) the appropriate authority determines that some other change of circumstances has occurred which should result in the benefit period ending with an earlier week,

when the benefit period shall end with the last day of the final benefit week for which he is entitled to housing benefit.

Date on which change of circumstances is to take effect

68.—(1) Except in cases where either regulation 8(3) (eligible housing costs) or regulation 26 (disregard of changes in tax, contributions, etc) applies and subject to paragraphs (2) to (4) and to regulation 69(7), a change of circumstances which affects entitlement to, or the amount of, housing benefit (“change of circumstances”) shall take effect from the first day of the benefit week following the date on which the change of circumstances actually occurs, and where that change is cessation of entitlement to any benefit under the benefit Acts⁽⁷⁴⁾, the date on which the change actually occurs shall be the day immediately following the last day of entitlement to that benefit.

(2) Where the change of circumstances is a change in the amount of rent or rates payable, it shall take effect from the first day of the benefit week in which it actually occurs or, in a case to which regulation 69(2)(b) or 69(3)(b) applies (calculation of daily amounts), from the day on which it actually occurs.

(3) Where the change of circumstances is an amendment to these Regulations, it shall, subject to regulation 69(7), take effect from the date on which the amendment to these Regulations comes into force.

(4) If two or more changes of circumstances occurring in the same benefit week would, but for this paragraph, take effect in different benefit weeks in accordance with paragraphs (1) to (3), they shall take effect from the first day of the benefit week in which they occur unless one of the changes is a change in the amount of rent or rates payable in a case to which regulation 69(2)(b) or 69(3)(b) applies, in which case they shall take effect from the day on which that change actually occurs.

⁽⁷⁴⁾ The benefit Acts are specified in section 84(1) of the Social Security Act 1986 (c. 50).

Calculation of weekly amounts

69.—(1) A person's entitlement to housing benefit in any benefit week shall be calculated in accordance with the following provisions of this regulation.

- (2) The weekly amount of a claimant's eligible rent shall be—
 - (a) subject to paragraph (4), where rent is payable at intervals of one week or a multiple thereof, the amount of eligible rent payable weekly or, where it is payable at intervals of a multiple of a week, the amount determined by dividing the amount of eligible rent payable by the number equal to the number of weeks in respect of which it is payable; or
 - (b) subject to paragraph (5), where rent is payable at intervals of one month or any other interval which is not a week or a multiple thereof, the amount determined by dividing an amount of that eligible rent by the number equal to the number of days in the period in respect of which it is payable and multiplying the quotient so obtained (referred to in paragraph (5) as the "daily rent") by 7;
- (3) The weekly amount of a claimant's eligible rates shall be—
 - (a) where payments by way of rates are made together with payments of rent, the amount calculated as if those payments were rent under paragraph (2);
 - (b) subject to paragraph (5), in any other case, the amount determined by dividing an amount of those eligible rates by the number equal to the number of days in the period in respect of which it is payable and multiplying the quotient so obtained (referred to in paragraph (5) as the "daily rate") by 7.
- (4) In the case of a claimant whose weekly amount of eligible rent or rates falls to be calculated in accordance with paragraph (2)(a)—
 - (a) in a case to which regulation 65(2) applies (date on which entitlement is to commence), his eligible rent or rates for the benefit week in which he becomes liable to make payments in respect of the dwelling which he occupies as his home shall be calculated by reference to the amount of eligible rent or rates payable in respect of a week, whether or not his liability to make those payments relates to the whole of that benefit week;
 - (b) where the amount which the claimant is liable to pay is altered during a benefit week his eligible rent or rates for that benefit week shall be calculated by reference to the new amount of eligible rent or rates so payable;
 - (c) where the claimant ceases to occupy as his home the dwelling in respect of which he is entitled to housing benefit, his eligible rent or rates for the benefit week in which he ceases to be liable to make payments in respect of the dwelling which he occupies as his home shall be nil, unless he is liable to make payments in respect of that dwelling for the whole of that benefit week.
- (5) In the case of a claimant whose weekly eligible rent or rates falls to be calculated in accordance with paragraph (2)(b) or (3)(b)—
 - (a) in a case to which regulation 65(2) (date on which entitlement is to commence) applies, his eligible rent or rates for the benefit week in which he becomes liable to make payments in respect of the dwelling which he occupies as his home shall be calculated by multiplying his daily rent or daily rate by the number equal to the number of days in that benefit week for which he is liable to make such payments;
 - (b) where the amount of eligible rent or rates which the claimant is liable to pay is altered during a benefit week, his eligible rent or rates for that week shall be calculated by multiplying his old and new daily rent or daily rate by the number equal to the number of days in that week which relate respectively to the old and new amounts which he is liable to pay;

- (c) where the claimant ceases to occupy as his home the dwelling in respect of which he is entitled to housing benefit, his eligible rent or rates for the week in which he ceases to be so liable shall be calculated by multiplying his daily rent or rate by the number equal to the number of days in that week for which he is liable to make such payments.
- (6) In the case of a claimant whose weekly eligible rent or rates falls to be calculated in accordance with paragraph (5)(a) or (c) by reference to the daily rent or rates in his case, his weekly applicable amount, weekly income, the weekly amount of any non-dependant deductions and the minimum amount payable in his case shall be calculated in the same manner as his weekly eligible rent or rates by reference to the amounts determined in his case in accordance with Parts V to VIII (applicable amounts, income and capital, students and amount of benefit).
- (7) Where a change in the amount of a claimant's applicable amount, income or non-dependant deductions falls to be taken into account in the same benefit week as a change in his eligible rent or rates to which paragraph (5)(b) applies, it shall be taken into account in that week on a daily basis in the same manner and as if it had occurred on the same day as that change in his eligible rent or rates.
- (8) The appropriate authority may, if a claimant's circumstances are exceptional, increase the weekly amount of any housing benefit to be paid in his case, but only where such an increase is in respect of costs which are eligible housing costs under Part III.
- (9) Any amount determined under these Regulations may, if it is appropriate, be rounded to the nearest whole penny by disregarding any amount less than half a penny and treating any amount of half a penny or more as a whole penny.

Rent and rate free periods

70.—(1) This regulation applies to a claimant for any period (referred to in this regulation as a rent-free period) in respect of which he is not liable to pay rent or to make a payment by way of rates made together with rent except for any period—

- (a) for which a rating authority has, exceptionally, failed to set a rate; or
- (b) to which regulation 6(1)(d) (waiver of rent by landlord in return for work done) applies.
- (2) In the case of the beginning or ending of a claimant's benefit period—
 - (a) where regulation 69(2)(a) (calculation of weekly amounts) applies
 - (i) his eligible rent for the benefit week in which that period begins shall be nil, and
 - (ii) his eligible rent for the benefit week in which that period ends shall be his weekly eligible rent determined in accordance with regulation 69(2)(a) unless the rent-free period lasts for the whole of that benefit week, in which case his eligible rent shall be nil;
 - (b) where regulation 69(2)(b) applies, his eligible rent for the benefit week in which the rent-free period begins and ends shall be calculated on a daily basis as if those benefit weeks were weeks to which regulation 69(5) applies.
- (3) For the purpose of determining the weekly applicable amount and income of a claimant to whom this regulation applies, the weekly amount of any non-dependant deductions and the minimum amount payable in his case—
 - (a) in a case to which regulation 69(2)(a) applies, the amounts determined in his case in accordance with Parts V to VIII (applicable amounts, income and capital, students and amount of benefit) shall be multiplied by 52 or 53, whichever is appropriate, and divided by the number equal to the number of weeks in that 52 or 53 week period in respect of which he is liable to pay rent;
 - (b) subject to paragraph (4), in a case to which regulation 69(2)(b) applies, the amounts determined in his case in accordance with Parts V to VIII shall be multiplied by 365 or

366, whichever is appropriate and divided by the number of days in that 365 or 366 day period in respect of which he is liable to pay rent.

(4) In a case to which paragraph (3)(b) applies, where either regulation 69(6) or (7) also applies or it is the beginning or end of a rent-free period, the weekly amounts referred to in paragraph (3) shall first be calculated in accordance with sub-paragraph (b) of that paragraph and then determined on a daily basis in the same manner as the claimant's eligible rent or rates.

PART X

CLAIMS

Who may claim

71.—(1) In the case of a married or unmarried couple or members of a polygamous marriage a claim shall be made by whichever one of them they agree should so claim or, in default of agreement, by such one of them as the appropriate authority shall determine.

(2) Where a person who is liable to make payments in respect of a dwelling is unable for the time being to act, and—

- (a) a receiver has been appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf; or
- (b) in Scotland, his estate is being administered by a tutor, curator or other guardian acting or appointed in terms of law; or
- (c) an attorney with a general power or a power to claim or as the case may be, receive benefit, has been appointed by that person under the Powers of Attorney Act 1971⁽⁷⁵⁾ or the Enduring Powers of Attorney Act 1985⁽⁷⁶⁾,

that receiver, tutor, curator, other guardian or attorney, as the case may be, may make a claim on behalf of that person.

(3) Where a person who is liable to make payments in respect of a dwelling is unable for the time being to act and paragraph (2) does not apply to him, the appropriate authority may, upon written application made to them by a person who, if a natural person, is over the age of 18, appoint that person to exercise on behalf of the person who is unable to act, any right to which that person might be entitled under the Act and to receive and deal on his behalf with any sums payable to him.

(4) Where the appropriate authority has made an appointment under paragraph (3)—

- (a) it may at any time revoke it;
- (b) the person appointed may resign his office after having given 4 weeks notice in writing to the appropriate authority of his intention to do so;
- (c) any such appointment shall terminate when the appropriate authority is notified that a receiver or other person to whom paragraph (2)(b) or (c) applies has been appointed.

(5) Where a person who is liable to make payments in respect of a dwelling is for the time being unable to act and the Secretary of State has appointed a person to act on his behalf for the purposes of the Act the appropriate authority may if that person so requests in writing, treat him as if he had been appointed by them under paragraph (3).

(6) Anything required by these Regulations to be done by or to any person who is for the time being unable to act may be done by or to the receiver, tutor, curator, other guardian or attorney, if

⁽⁷⁵⁾ 1971 c. 27.

⁽⁷⁶⁾ 1985 c. 29.

any, or by or to the person appointed or treated as appointed under this regulation and the receipt of any such person so appointed shall be a good discharge to the appropriate authority for any sum paid.

Time and manner in which claims are to be made

72.—(1) Every claim shall be in writing and made on a properly completed form approved for the purpose by the appropriate authority or in such written form as the appropriate authority may accept as sufficient in the circumstances of any particular case or class of cases and be accompanied by or supplemented by such certificates, documents, information and evidence as are required in accordance with regulation 73(1) (evidence and information).

(2) The forms approved for the purpose of claiming shall be provided free of charge by the appropriate authority or such persons as they may authorise or appoint for the purpose.

(3) Each appropriate authority shall notify the Secretary of State of the address to which claims delivered or sent to the appropriate DHSS office are to be forwarded.

(4) A claim—

- (a) may be sent or delivered to the appropriate DHSS office where the claimant or his partner is also claiming income support;
- (b) where it has not been sent or delivered to the appropriate DHSS office, shall be sent or delivered to the designated office;
- (c) sent or delivered to the appropriate DHSS office shall be forwarded to the appropriate authority within two working days of the date of either the date of determination of the claim for income support or the receipt of the claim at the appropriate DHSS office, whichever is the later, or as soon as reasonably practicable thereafter.

(5) The date on which a claim is made shall be—

- (a) in a case where an award of income support has been made to the claimant or his partner and the claim is made within 4 weeks of the date on which the claim for that income support was received at the appropriate DHSS office, the first day of entitlement to that income support;
- (b) in a case where the claimant or his partner claimed income support but there is no entitlement to income support, the date on which the claim is received at the appropriate DHSS office or the designated office whichever is the earlier;
- (c) in any other case, the date on which the claim is received at the designated office.

(6) Where a claim received at the designated office has not been made in the manner prescribed in paragraph (1), that claim is for the purposes of these Regulations defective.

(7) Where a claim is defective because—

- (a) it was made on the form approved for the purpose but that form is not accepted by the appropriate authority as being in a written form sufficient in the circumstances of the case; or
- (b) it was made in writing but not on the form approved for the purpose and the appropriate authority does not accept the claim as being in a written form which is sufficient in the circumstances of the case,

the appropriate authority may, in a case to which sub-paragraph (a) applies, refer the defective claim to the claimant or, in a case to which sub-paragraph (b) applies, supply the claimant with the approved form.

(8) The appropriate authority shall treat a defective claim as if it had been made in the first instance where the approved form referred or sent to the claimant in accordance with paragraph (7) is received at the designated office properly completed within 4 weeks of it having been referred or sent to him, or such longer period as the appropriate authority may consider reasonable.

(9) A claim which is made on an approved form for the time being is, for the purposes of this regulation, properly completed if completed in accordance with the instructions on the form.

(10) Where, exceptionally, a rating authority has not made a rate by the beginning of the rating year, if a claim for a rate rebate is properly made or treated as properly made and—

- (a) the date on which the claim is made or treated as made is in the period from the 1st April of the current year and ending 4 weeks after the date on which the authority makes the rate; and
- (b) if a rate had been made, the claimant would have been entitled to a rate rebate either from—
 - (i) the benefit week in which the 1st April of the current year fell, or
 - (ii) a benefit week falling after the date specified in head (i) but before the claim was made,

the appropriate authority shall treat the claim as made in the benefit week immediately preceding the benefit week in which such entitlement would have commenced.

(11) Where the claimant is not entitled to housing benefit in the benefit week immediately following the date of his claim but the appropriate authority is of the opinion that unless there is a change of circumstances he will be entitled to housing benefit for a period beginning not later than the thirteenth benefit week following the date on which the claim is made, the appropriate authority may treat the claim as made on a date in the benefit week immediately preceding the first benefit week of that period of entitlement and award benefit accordingly.

(12) A person to whom housing benefit has been granted, or the partner of such a person, may make a claim to the appropriate authority for a further grant of that benefit to take effect immediately after the end of his current benefit period not more than 13 weeks before the end of that period.

(13) A person may make a further claim not more than 4 weeks after the end of his benefit period or the benefit period of his partner or former partner for a further grant of such benefit to take effect immediately after the end of that benefit period.

(14) The appropriate authority shall invite a person to whom housing benefit has been granted to make a claim for a further grant of that benefit where either—

- (a) the benefit period ended in circumstances to which regulation 67(a) refers (end of entitlement to income support), or
- (b) the benefit period is for a period exceeding 16 weeks and is due to end within 8 weeks in accordance with regulation 66(2) to (4) (benefit period) and no such claim has been received in accordance with paragraph (12),

and any claim received following that invitation, if made within 4 weeks of the end of the current benefit period, shall have effect immediately after the end of that benefit period in accordance with paragraph (12) or, as the case may be, paragraph (13).

(15) Where the claimant makes a claim in respect of any period before the date on which that claim was, or was treated as, made and he proves that there was good cause for his failure to make that claim throughout the period between any date in that earlier period and the date on which the claim was or was treated as made, his claim shall, subject to section 165A of the Social Security Act(77) (52 week limit on entitlement before the date of claim), be treated as made on the first day of that earlier period from which he can prove good cause.

Evidence and information

73.—(1) A person who makes a claim shall furnish such certificates, documents, information and evidence in connection with the claim, or any question arising out of it, as may be reasonably required

(77) 1975, c.14; this section was substituted by paragraph 87 of Schedule 10 to the Social Security Act 1986 (c. 50) and is applied to Housing Benefit by paragraph 48 of Schedule 10 to that Act.

by the appropriate authority in order to determine that person's entitlement to housing benefit, and shall do so within 4 weeks of being required to do so or such longer period as the appropriate authority may consider reasonable.

- (2) Where a request is made under paragraph (1), the appropriate authority shall—
- (a) inform the claimant of his duty under regulation 75 (duty to notify change of circumstances) to notify the designated office of any change of circumstances; and
 - (b) without prejudice to the extent of the duty owed under regulation 75, indicate to him either orally or by notice or by reference to some other document available to him on application and without charge, the kind of change or circumstances which is to be notified.

Amendment and withdrawal of claim

74.—(1) A person who has made a claim may amend it at any time before a determination has been made on it, by a notice in writing delivered or sent to the designated office and any claim so amended shall be treated as if it had been amended in the first instance.

(2) A person who has made a claim may withdraw it at any time before a determination has been made on it, by notice to the designated office, and any such notice of withdrawal shall have effect when it is received.

Duty to notify changes of circumstances

75.—(1) Subject to paragraph (2), if at any time between the making of a claim and its determination, or during the benefit period, there is a change of circumstances which the claimant, or any person by whom or on whose behalf sums payable by way of housing benefit are receivable, might reasonably be expected to know might affect the claimant's right to, the amount of or the receipt of housing benefit, that person shall be under a duty to notify that change of circumstances by giving notice in writing to the designated office.

- (2) The duty imposed on a person by paragraph (1) does not extend to changes in—
- (a) the amount of rent payable to a housing authority;
 - (b) the amount of rates payable to a rating authority;
 - (c) the age of the claimant or that of any member of his family or of any non-dependants;
 - (d) these Regulations;
 - (e) in the case of a claimant on income support, any circumstances which affect the amount of income support but not the amount of housing benefit to which he is entitled, other than the cessation of that entitlement to income support.

(3) Notwithstanding paragraph (2)(c) or (e) a claimant shall be required by paragraph (1) to notify the designated office of any change in the composition of his family arising from the fact that a person who was a member of his family is now no longer such a person because he ceases to be a child or young person.

PART XI

DETERMINATION OF QUESTIONS

Who is to make a determination

76.—(1) Unless provided otherwise by these Regulations, any matter required to be determined under these Regulations shall be determined in the first instance by the appropriate authority.

(2) An authority shall be under no duty to determine a claim—

- (a) where the claim has not been made in accordance with regulation 72(1) (time and manner in which claims are to be made) or treated as so made by virtue of regulation 72(8);
- (b) where the claimant has failed to satisfy the provisions of regulation 73 (evidence and information);
- (c) where the claim has been or is treated as withdrawn under regulation 74 (amendment and withdrawal of claim);
- (d) made more than 13 benefit weeks prior to the expiry of the claimant's current benefit period.

(3) Every claim shall be determined by the appropriate authority within 14 days of the provisions of regulations 72 and 73 being satisfied or as soon as reasonably practicable thereafter.

Notification of determinations

77. An authority shall notify in writing any person affected by a determination made by it under these Regulations—

- (a) in the case of a determination on a claim, forthwith or as soon as reasonably practicable thereafter;
- (b) in any other case, within 14 days of that determination or as soon as reasonably practicable thereafter,

and every notification shall include a statement as to the matters set out in Schedule 6.

Time and manner of making notifications, requests or representations

78.—(1) Any notice or other document that is to be given or sent to an authority shall be deemed to have been given or sent on the day it is received at the designated office.

(2) Any notice or other document that is to be given or sent by an authority to any person shall be deemed to have been given or sent if sent by post to that person's last known or notified address, on the date it was posted.

(3) The times specified by regulations 79(2) (review of determinations), 80 (requests for statement of reasons) and 81 (further review of determinations) for making a request for a statement or representations may be extended for special reasons, by the appropriate authority or where relevant a Review Board, even though the time specified may have already expired.

(4) Any application for an extension of time shall be in writing, shall be sent or delivered to the designated office and shall be determined by the appropriate authority or where relevant decided by a Review Board.

(5) There shall be no review or further review of a determination or decision of a Review Board under paragraph (3) or (4).

Review of determinations

79.—(1) Any determination or decision of a Review Board may be reviewed at any time by the appropriate authority if—

- (a) there has been any relevant change of circumstances since the determination or decision was made; or
- (b) it is satisfied and, in the case of a decision, satisfied by fresh evidence, that the determination or decision was made in ignorance of, or was based on a mistake as to, some material fact; or

- (c) except in the case of a decision made by a Review Board, it is satisfied that it was based on a mistake as to the law.
- (2) Notwithstanding paragraph (1), if a person makes written representations to an authority concerning a determination which it makes in relation to him within 6 weeks of the date of notification to him of the determination, the authority shall review the determination in the light of those representations.
- (3) Subject to paragraph (4), where a determination is revised on review, the determination as revised shall have effect—
 - (a) in a case to which paragraph (1)(a) applies, from the date on which the relevant change of circumstances is to have effect, in accordance with regulation 68 (date on which relevant change of circumstances is to take effect);
 - (b) in a case to which paragraph (1)(b) or (c) or (2) applies, in place of the original determination;
 - (c) in the case of a determination under regulation 72(15) (time and manner in which claims are to be made), not to allow a claim to be treated as made on a date earlier than it was made, which is revised in favour of the claimant, from the date on which in accordance with regulation 72(15) that claim is treated as made.
- (4) For the purposes of calculating the period of 6 weeks mentioned in paragraph (2) no account shall be taken of any period beginning with the receipt by an authority of a request for a statement under regulation 80 (requests for statement of reasons) and ending with the provision to that person of that statement.
- (5) Except as provided by paragraph (3)(c) a determination or decision shall not be revised upon review so as to make housing benefit payable or to increase the amount of benefit payable in respect of any period which is more than 52 weeks before—
 - (a) where written representations were made in accordance with paragraph (2), the date on which those written representations were made; or
 - (b) in any other case, the date on which the determination was revised.
- (6) Regulations 77 to 80 shall apply to the revision of any determination as they apply to a determination.

Requests for statement of reasons

80.—(1) A person to whom an authority sends or delivers a notification of determination may request in writing the authority to provide a written statement setting out the reasons as to its determination of any matter set out in the notice.

(2) The written statement referred to in paragraph (1) shall be sent to the person requesting it within 14 days or as soon as is reasonably practicable thereafter.

Further review of determinations

81.—(1) A person who has made representations under regulation 79(2) (review of determinations) may give or send to the appropriate authority written notice requesting a further review of the determination within 4 weeks of the date on which the determination on those representations was sent to him.

(2) The notice given under paragraph (1) shall set out the grounds on which a further review is requested.

(3) The further review shall be conducted by a Review Board appointed by the appropriate authority and constituted in accordance with Schedule 7.

(4) An authority may provide a Review Board appointed by it with such officers and such accommodation, services and other facilities as appear to the authority to be necessary or expedient for the proper performance of the functions of the Review Board.

Procedure on further review

82.—(1) Within 6 weeks of receipt by an authority of a notice under regulation 81(1) (further review of determinations) requesting a further review or, if that is not reasonably practicable as soon as possible thereafter, the Review Board shall hold an oral hearing in order to conduct a further review.

(2) Subject to the provisions of these Regulations—

- (a) the procedure in connexion with a further review shall be such as the Chairman of the Review Board shall determine;
- (b) any person affected may make representations in writing in connexion with the further review and such representations shall be considered by the Review Board;
- (c) at the hearing any person affected has the right to—
 - (i) be heard, and may be accompanied and may be represented by another person whether that person is professionally qualified or not, and for the purposes of the proceedings at the hearing any representative shall have the rights and powers to which any person affected is entitled under these Regulations;
 - (ii) call persons to give evidence; and
 - (iii) put questions to any person who gives evidence;
- (d) the Review Board may call for, receive or hear representations and evidence from any person present as it considers appropriate.

(3) Reasonable notice (being not less than 10 days beginning on the day on which notice is given and ending on the day before the hearing of the further review) of the time and place of the oral hearing before the Review Board shall be given to any person affected, and if such notice has not been given the hearing may proceed only with the consent of every person affected or his representative.

(4) If any person affected should fail to appear at the hearing, notice having been given to him in accordance with paragraph (3), the Review Board may, having regard to all the circumstances including any explanations offered for the absence, proceed with the hearing notwithstanding his absence, or give such directions with a view to the conduct of the further review as it may think proper.

(5) Any person affected to whom notice has been given under paragraph (3) may apply in writing to the Chairman requesting a postponement of the hearing or withdrawing his application for a further review at any time before the decision on further review is given and either before or after the hearing has begun, and the Chairman may grant or refuse the application as he thinks fit.

(6) A hearing may be adjourned by the Review Board at any time during the hearing on the application of any person affected or of its own motion, and, if a hearing is adjourned part heard and after the adjournment the Review Board is differently constituted, otherwise than through the operation on that occasion of paragraph (7), the proceedings shall be by way of a complete rehearing of the case.

(7) Any hearing may, with the consent of every person affected or his representative but not otherwise, be proceeded with in the absence of any member of the Review Board provided that at least two members are present and one member present is or acts as the Chairman of the Board.

(8) The decision of the majority of the Review Board shall be the decision of the Board, and where the Board consists of an even number, the Chairman shall have a second or casting vote.

(9) An authority may pay travelling expenses in respect of attendance at the hearing to any person affected and to one other person representing or accompanying him at the hearing.

Decisions upon further review

83.—(1) Upon further review the Review Board shall decide whether to confirm or revise the determination of the appropriate authority and, where the determination has been reviewed and revised under regulation 79 (review of determination), it shall decide whether to confirm or revise the determination so revised.

(2) In reaching its decision the Review Board shall apply the provisions of these Regulations as though any duty imposed on, or power or discretion conferred on, an authority were imposed or conferred upon the Review Board.

(3) In its application to a decision of a Review Board, the 52 week period referred to in regulation 79(5) (review of determinations) shall be calculated from the date that the appropriate authority either confirmed or revised its determination on review.

(4) The Chairman of the Review Board shall—

- (a) record in writing all its decisions; and
- (b) include in the record of every decision a statement of the reasons for such decisions and of its findings on questions of fact material thereto.

(5) Within 7 days of the Review Board's decision or, if that is not reasonably practicable, as soon as possible thereafter, a copy of the record of that decision made in accordance with this regulation shall be given or sent to every person affected.

Effect of revising a decision

84. Where a Review Board has decided that a determination or, as the case may be, a revised determination of an authority shall be revised, the authority shall alter its determination or, as the case may be, revised determination in accordance with that decision with effect from the date of determination or, as the case may be, revised determination.

Correction of accidental errors in determinations and decisions

85.—(1) Subject to regulation 87 (provisions common to regulations 85 and 86), accidental errors in any determination or record of a decision may at any time be corrected by the determining authority who gave the determination or decision or by an authority of like status.

(2) A correction to a determination or to the record of a decision shall be deemed to be part of that determination or of that record and written notice of it shall be given as soon as practicable to any person affected.

Setting aside of determinations and decisions on certain grounds

86.—(1) Subject to regulation 87 (provisions common to regulations 85 and 86), on an application made by any person affected by the determination or decision, a determination or decision may be set aside by the determining authority which gave the determination or decision or by an authority of like status, in a case where it appears just to set the determination or decision aside on the ground that—

- (a) a document relating to the matters relevant to the determination or decision was not sent to, or was not received at an appropriate time by, any person affected by the determination or decision, his representative, or the determining authority which gave the determination or decision; or

- (b) in the case of a hearing before the Review Board, any person affected or his representative was not present; or
 - (c) the interests of justice so require.
- (2) An application under this regulation shall be made in writing and sent or delivered to the determining authority which gave the determination or decision, within 13 weeks of the day on which notice of that determination or decision was given.
- (3) Where an application to set aside a decision of the Review Board is entertained under paragraph (1), any person affected shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.
- (4) Notice in writing of a determination or decision on an application to set aside a determination or decision shall be given to any person affected, as soon as may be practicable, and the notice shall contain a statement giving reasons for the determination or decision.
- (5) For the purposes of determining under these Regulations an application to set aside a determination or decision there shall be disregarded regulation 78(2) (time and manner of making notifications, requests or representations) and any provision in any enactment or instrument to the effect that any notice or document required or authorised to be given or sent to any person shall be deemed to have been given or sent if it was sent by post to that person's last known or notified address.

Provisions common to regulations 85 and 86

- 87.—**(1) In regulations 85 and 86—
- “authority of like status” means a Review Board of different composition to that giving the decision where it is inexpedient for that same Review Board to correct or set aside its decision.
 - “determining authority” means an appropriate authority or a Review Board.
- (2) In calculating the time specified in regulations 79(2) (review of determinations), 81(1) (further review of determinations), and 86(2) (setting aside of determinations and decisions on certain grounds) there shall be disregarded any day before the day on which notice was given of a correction to a determination or to the record of a decision under regulation 85 (correction of accidental errors in determinations and decisions) or a refusal to make such a correction, or on which notice is given of a determination or decision that a determination or decision shall not be set aside following an application made under regulation 86 as the case may be.
- (3) There shall be no review or further review of a correction made under regulation 85 or a refusal to make such a correction or against a determination or decision given under regulation 86.

PART XII

PAYMENTS

Time and manner of payment

- 88.—**(1) Subject to paragraphs (2) and (3) and regulations 90 to 97 (frequency of payment of rent allowance, and payment on account of a rent allowance, payment provisions, offsetting) the appropriate authority shall pay housing benefit to which a person is entitled under these Regulations at such time and in such manner as is appropriate, having regard to—
- (a) the times at which and the frequency with which a person's liability to make payment of rent or rates arises, and
 - (b) the reasonable needs and convenience of the person entitled thereto.

(2) Where a person's entitlement to housing benefit is less than £1 weekly the appropriate authority may pay that benefit at 6 monthly intervals.

(3) Subject to regulations 91 to 96 (payment on account of rent allowance, payment provisions) every authority shall make the first payment of any housing benefit awarded by it within 14 days of the receipt of the claim at the designated office or, if that is not reasonably practicable, as soon as possible thereafter.

Circumstances in which a rate rebate may be treated as if it fell to be paid as a rent allowance

89. The circumstances in which a rate rebate may be treated as if it fell to be paid as a rent allowance are that a person is liable to make payments by way of rates or an amount treated as a payment of rates by virtue of regulation 9(2) (rates), other than to a rating authority.

Frequency of payment of a rent allowance

90.—(1) Subject to paragraphs (3) to (5) any rent allowance other than a payment made in accordance with regulation 88(2) or (3) or 91 (time and manner of payment, payment on account of rent allowance) shall be paid at intervals of 2 or 4 weeks or one month or, with the consent of the person entitled, at intervals greater than one month.

(2) A payment of a rent allowance in accordance with paragraph (1) shall be made insofar as it is practicable to do so, 2 weeks before the end of the period in respect of which it is made unless the liability to pay rent of the person entitled is in respect of a past period, in which case payment of the rent allowance may be made at the end of that period.

(3) Where a person's weekly entitlement to a rent allowance is more than £2 he may require payment at two weekly intervals and the appropriate authority shall pay at two weekly intervals in such a case.

(4) The appropriate authority may pay a rent allowance at weekly intervals where either—

- (a) it considers that unless the rent allowance is paid at weekly intervals an overpayment is likely to occur; or
- (b) the person entitled is liable to pay his rent weekly and it considers that it is in his interest that his allowance be paid weekly.

(5) Subject to paragraphs (2) and (3), the appropriate authority may pay a rent allowance to a student once a term.

Payment on account of a rent allowance

91.—(1) Where it is impracticable for the appropriate authority to determine a claim for a rent allowance within 14 days of the claim for it having been made and that impracticability does not arise out of the failure of the claimant, without good cause, to furnish such information, certificates, documents or evidence as the authority reasonably requires and has requested, the authority shall make a payment on account of any entitlement to a rent allowance of such amount as it considers reasonable having regard to such information which may at the time be available to it concerning the claimant's circumstances.

(2) The notice of award of any payment on account of a rent allowance made under paragraph (1) shall contain a notice to the effect that if on subsequent determination of the claim the person is not entitled to a rent allowance, or is entitled to an amount of rent allowance less than the amount of the payment on account, the whole of the amount paid on account or the excess of that amount over the entitlement to an allowance, as the case may be, will be recoverable from the person to whom the payment on account was made.

(3) Where on subsequent determination the amount of rent allowance payable differs from the amount paid on account under paragraph (1), future payments of rent allowance shall be increased or reduced to take account of any underpayment or, as the case may be, overpayment.

Payment to be made to a person entitled

92.—(1) Subject to regulations 93 to 96 (payment to landlords, withholding benefit, payment on death) and the following provisions of this regulation, payment of any rent allowance to which a person is entitled shall be made to that person.

(2) Where a person other than a person who is entitled to a rent allowance or rate rebate made the claim and that first person is a person referred to in regulation 71(2), (3) or (5) (persons appointed to act for a person unable to act), payment may be made to that person.

(3) A person entitled to a rent allowance, although able to act on his own behalf, may request in writing that the appropriate authority make payments to a person, who if a natural person must be aged 18 or more, nominated by him, and the authority may make payments to that person.

Circumstances in which payment is to be made to a landlord

93. A payment of rent allowance shall be made to a landlord (and in this regulation the “landlord” includes a person to whom rent or sums by way of rates are payable by the person entitled to that allowance)—

- (a) where under Regulations made under the Act an amount of income support payable to the claimant or his partner is being paid direct to the landlord; or
- (b) where sub-paragraph (a) does not apply and the person is in arrears of an amount equivalent to 8 weeks or more of the amount he is liable to pay his landlord as rent, except where it is in the overriding interest of the claimant not to make direct payments to the landlord.

Circumstances in which payment may be made to a landlord

94. Where regulation 93 (circumstances in which payment is to be made to a landlord) does not apply, a payment of a rent allowance may nevertheless be made to a person’s landlord where—

- (a) the person has requested or consented to such payment;
- (b) payment to the landlord is in the interest of the claimant and his family;
- (c) the person has ceased to reside in the dwelling in respect of which the allowance was payable and there are outstanding payments of rent but any payment under this sub-paragraph shall be limited to an amount equal to the amount of rent outstanding.

Withholding of benefit

95.—(1) An authority shall withhold payment of a rent allowance where, but for the fact that it is in the overriding interest of the claimant not to make direct payment to his landlord, the authority would have made direct payments under Regulation 93(b) (circumstances in which payment is to be made to a landlord).

(2) In any other case an authority may withhold payment of a rent allowance where it is satisfied that the person entitled to that allowance is not paying regularly the rent to which that allowance relates.

(3) A payment withheld under paragraph (1) or (2) shall be retained by the authority until such time as it is satisfied that—

- (a) the claimant has discharged his liability to his landlord; or
- (b) the claimant will discharge his liability to his landlord if payment is made to him; or

(c) in a case to which paragraph (1) applies, it is no longer in the overriding interest of the claimant not to make payment to his landlord.

(4) Where it appears to an authority that a question has arisen in relation to a person's entitlement to housing benefit or to payment of that benefit, it may withhold payment of the benefit in whole or in part pending the determination of that question on review under regulation 79.

(5) Where it appears to an authority that a question has arisen whether any amount paid to a person by way of, or in connection with a claim for housing benefit, is recoverable under section 29 of the Act or Part XIII (overpayments) of these Regulations, it may withhold any payment of arrears of benefit to that person, in whole or in part, pending the determination of that question.

(6) Upon determination of a question to which paragraph (4) or (5) refers, any benefit withheld under those paragraphs shall be paid except to the extent that there was no entitlement to that benefit or a recoverable overpayment remains unrecovered from the person from whom benefit was withheld.

Payment on death of the person entitled

96.—(1) Where the person entitled to an allowance has died the appropriate authority shall make payment either to his personal representative or, where there is none, his next of kin if aged 16 or over.

(2) For the purposes of paragraph (1) “next of kin” means in England and Wales the persons who would take beneficially on an intestacy and in Scotland the persons entitled to the moveable estate on intestacy.

(3) A payment under paragraph (1) may not be made unless the personal representative or the next of kin, as the case may be, makes written application for the payment of any sum of benefit to which the deceased was entitled, and such written application is sent to or delivered to the appropriate authority at its designated office within 12 months of the deceased's death or such longer period as the authority may allow in any particular case.

(4) The authority may dispense with strict proof of title of any person claiming under paragraph (3) and the receipt of such a person shall be a good discharge to the authority for any sum so paid.

Offsetting

97.—(1) Where a person has been paid a sum of housing benefit under a determination which is subsequently revised upon review or further review, any sum paid in respect of a period covered by the subsequent determination shall be offset against arrears of entitlement under the subsequent determination except to the extent that the sum exceeds the arrears and shall be treated as properly paid on account of them.

(2) No amount may be offset under paragraph (1) which has been determined to be a recoverable overpayment under regulation 99 (recoverable overpayments).

PART XIII

OVERPAYMENTS

Meaning of overpayment

98. In this Part “overpayment” means any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations (whether on initial determination or as subsequently revised on review or further review) and includes any amount paid on account under regulation 91 which is in excess of the entitlement to housing benefit as subsequently determined.

Recoverable overpayments

99.—(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) This paragraph applies to an overpayment caused by an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), “overpayment caused by official error” means an overpayment caused by a mistake made or something done or omitted to be done by the appropriate authority or by an officer or person acting for that authority or by an officer of the Department of Health and Social Security or the Department of Employment acting as such where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake, act or omission.

Person by whom recovery may be made

100. The authority which paid the recoverable overpayment may recover it.

Person from whom recovery may be sought

101.—(1) Subject to paragraph (2) a recoverable overpayment shall be recoverable from either—

- (a) where the overpayment was in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) by or on behalf of the claimant or any other person to whom a payment of housing benefit may be made, the person who misrepresented or failed to disclose that material fact; or
- (b) in any case, the claimant or the person to whom the overpayment was made.

(2) Where a recoverable overpayment is made to a claimant who has one or more partners, recovery of the overpayment may be made by deduction from any housing benefit payable to a partner, provided that the claimant and that partner were members of the same household both at the time of the overpayment and when the deduction is made.

Method of recovery

102. Without prejudice to any other method of recovery, an authority may recover any recoverable overpayment from any person referred to in regulation 101 by deduction from any housing benefit to which that person is entitled or, where it is unable to do so, may request the Secretary of State to recover the overpayment from the benefits prescribed in regulation 105, in accordance with the provisions of that regulation.

Diminution of capital

103.—(1) Where in the case of a recoverable overpayment, in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) as to a person’s capital, or an error, other than one to which regulation 99(2) (effect of official error) refers, as to the amount of a person’s capital, the overpayment was in respect of a period (“the overpayment period”) of more than 13 benefit weeks, the appropriate authority shall, for the purpose only of calculating the amount of that overpayment—

- (a) at the end of the first 13 benefit weeks of the overpayment period, treat the amount of that capital as having been reduced by the amount of housing benefit overpaid during those 13 weeks;
- (b) at the end of each subsequent period of 13 benefit weeks, if any, of the overpayment period, treat the amount of that capital as having been further reduced by the amount of housing benefit overpaid during the immediately preceding 13 benefit weeks.

(2) Capital shall not be treated as reduced over any period other than 13 benefit weeks or in any circumstances other than those for which paragraph (1) provides.

Sums to be deducted in calculating recoverable overpayments

- 104.** In calculating the amount of a recoverable overpayment, the appropriate authority—
- (a) if it determines that a lesser amount was properly payable in respect of the whole or part of the overpayment period, shall deduct that amount;
 - (b) in the case of a rent or rate rebate only, may deduct so much of any payment by way of rent or, as the case may be, rates in respect of the overpayment period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous determination.

Recovery of overpayments from prescribed benefits

105.—(1) For the purposes of section 29(7) of the Act (recovery of overpaid housing benefit by deduction from other benefits), the benefits prescribed by this regulation are—

- (a) any benefit under the Social Security Act, except those specified in paragraph (2);
- (b) income support or family credit under Part II of the Act;
- (c) any benefit payable under the legislation of any member State other than the United Kingdom concerning the branches of social security mentioned in Article 4(1) of Regulation (EEC) No. 1408/71⁽⁷⁸⁾ on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation;
- (d) any benefit payable under the social security legislation applicable in Northern Ireland which is equivalent to benefit prescribed by paragraphs (a) to (c) subject to exceptions equivalent to those made by paragraph (2).

(2) Benefits excepted from paragraphs (1)(a) and (1)(d) are guardian's allowance and attendance allowance in respect of a child under section 35(1) to (4) of the Social Security Act⁽⁷⁹⁾ as modified by regulation 6 of the Social Security (Attendance Allowance) (No. 2) Regulations 1975⁽⁸⁰⁾.

(3) Where the Secretary of State is satisfied that:—

- (a) a recoverable overpayment of housing benefit has been made, in consequence of a misrepresentation of or failure to disclose a material fact (in either case whether fraudulently or otherwise), by or on behalf of a claimant or any other person to whom a payment of housing benefit has been made; and
- (b) the person who misrepresented that fact or failed to disclose it is receiving a sufficient amount of one or more of the benefits prescribed in paragraph (1) to enable deductions to be made for the recovery of the overpayment,

he shall, if requested to do so by an authority under regulation 102, recover the overpayment by deduction from any of those benefits.

⁽⁷⁸⁾ O.J. No. L149. 5.7.1971; Regulations No. 1408/71 and No. 574/72 were restated in amended form in Regulation No. 2001/83 (O.J. No. L230. 22.8.1983) and further amended by Council Regulation (EEC) No. 1660/85 (O.J. No. L160. 20.6.1985), Council Regulation (EEC) No. 1661/85 (O.J. No. L160. 20.6.1985) and Commission Regulation (EEC) No. 513/86 (O.J. No. L57. 28.2.1986).

⁽⁷⁹⁾ 1975 c. 14, amended by Social Security Act 1979 (c. 18), section 2.

⁽⁸⁰⁾ S.I. 1975/598, amended by S.I. 1977/1361.

Signed by authority of the Secretary of State for Social Services.

20th November 1987

Nicholas Scott
Minister of State,
Department of Health and Social Security

SCHEDULE 1

Regulation 10

INELIGIBLE SERVICE CHARGES

PART I

service charges other than for fuel

Ineligible service charges

1. The following service charges shall not be eligible to be met by housing benefit—
 - (a) charges in respect of day-to-day living expenses including, in particular, all provision of—
 - (i) meals (including the preparation of meals or provision of unprepared food);
 - (ii) laundry (other than the provision of premises or equipment to enable a person to do his own laundry);
 - (iii) leisure items such as either sports facilities (except a children's play area), or television rental and licence fees (except television and radio relay charges);
 - (iv) cleaning of rooms and windows (other than communal areas) except where neither the claimant nor any member of his household is able to clean them himself; and
 - (v) transport;
 - (b) charges in respect of—
 - (i) the acquisition of furniture or household equipment, and
 - (ii) the use of such furniture or equipment where that furniture or household equipment will become the property of the claimant by virtue of an agreement with the landlord;
 - (c) charges in respect of the provision of an emergency alarm system, except where such a system is provided in accommodation which is occupied by elderly, sick or disabled persons and such accommodation, apart from the alarm system, is either—
 - (i) specifically designed or adapted for such persons, or
 - (ii) otherwise particularly suitable for them, having regard to its size, heating system and other major features or facilities;
 - (d) charges in respect of medical expenses (including the cost of treatment or counselling related to mental disorder, mental handicap, physical disablement or past or present alcohol or drug dependence);
 - (e) charges in respect of the provision of nursing care or personal care (including assistance at meal-times or with personal appearance or hygiene);
 - (f) charges in respect of general counselling or other support services (whether or not provided by social work professionals) except those related to the provision of adequate accommodation or those provided by the landlord in person or someone employed by him who spends the majority of his time providing services for which the charges are not ineligible under the terms of this paragraph;
 - (g) charges in respect of any services not specified in sub-paragraphs (a) to (f) which are not connected with the provision of adequate accommodation.

Amount of ineligible charges

- 2.—(1) Where an ineligible service charge is not separated from or separately identified within other payments made by the occupier in respect of the dwelling, the appropriate authority shall

apportion such charge as is fairly attributable to the provision of that service, having regard to the cost of comparable services and such portion of those payments shall be ineligible to be met by housing benefit.

(2) In any other case, the whole amount of the ineligible service charge shall be ineligible to be met by housing benefit.

Excessive service costs

3. Where the appropriate authority considers that the amount of a service charge to which regulation 10(1)(e) (rent) applies is excessive in relation to the service provided for the claimant or his family, having regard to the cost of comparable services, it shall make a deduction from that charge of the excess and the amount so deducted shall be ineligible to be met by housing benefit.

PART II

payments in respect of fuel charges

4. A service charge for fuel except a charge in respect of services for communal areas shall be ineligible to be met by housing benefit.

5.—(1) Where a charge is ineligible to be met by housing benefit under paragraph 4—

- (a) in the calculation of entitlement to a rent rebate; or
- (b) in the calculation of entitlement to a rent allowance if the amount of the charge is specified or is otherwise readily identifiable (except where the amount of the charge is unrealistically low in relation to the fuel provided or the charge cannot readily be distinguished from a charge for a communal area), the amount ineligible to be met by housing benefit shall, subject to sub-paragraph (4), be the full amount of the service charge.

(2) In any other case, subject to sub-paragraph (3) and paragraph 6, the amount ineligible to be met by housing benefit shall be the following amounts in respect of each week—

- (a) for heating (other than hot water) £6.70;
- (b) for hot water £0.80;
- (c) for lighting £0.50;
- (d) for cooking £0.80.

(3) In a case to which sub-paragraph (2) applies, if a claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, the amount ineligible to be met by housing benefit under this paragraph shall be that estimated amount.

- (a) (4) (a) Except in a case to which sub-paragraph (5) applies and subject to the following provisions of this sub-paragraph and paragraph 6 in the case of a person on income support the amount ineligible to be met by housing benefit by virtue of sub-paragraph (1) shall not exceed by more than £1.50 (“the relevant amount”) the total amount that would have been ineligible to be met by housing benefit in respect of the service provided by virtue of sub-paragraph (2) had that sub-paragraph applied;
- (b) the relevant amount referred to in sub-paragraph (a) shall be increased by £1.50 with effect from the benefit week which includes the first Monday in April in each year from 1989 to 1992 inclusive unless in any of those years any Order made by the Secretary of State under section 63 of the Act increases amounts specified in these Regulations for the purpose of calculating a claimant’s applicable amount with effect from a different week in which case the relevant amount in (a) above shall be so increased with effect from the benefit week in which that increase takes effect in any particular case;

- (c) this sub-paragraph shall cease to apply and the amount ineligible to be met by housing benefit by virtue of sub-paragraph (1) shall be the full amount of the charge with effect from the benefit week which includes the first Monday in April 1993 unless the Order made by the Secretary of State under section 63 of the Act in that year increases amounts specified in these Regulations for the purpose of calculating a claimant's applicable amount with effect from a different week in which case this sub-paragraph shall cease to apply with effect from the benefit week in which that increase takes effect in any particular case.
 - (5) This sub-paragraph applies to a person who is liable to pay a charge for fuel which varies in accordance with the amount of fuel actually used (whether by means of a variable charge or a system of refunds or credits or otherwise).
- 6.—**(1) Where rent is payable other than weekly, any amount ineligible to be met by housing benefit which is specified in this Schedule as a weekly amount shall—
- (a) where rent is payable in multiples of a week, be multiplied by the number equal to the number of weeks in respect of which it is payable; or
 - (b) in any other case, be divided by 7 and multiplied by the number of days in the period to be used by the appropriate authority for the purpose of calculating the claimant's weekly eligible rent under regulation 69 (calculation of weekly amounts).
- (2) In a case to which regulation 70 applies (rent or rate free periods), any amount ineligible to be met by housing benefit which is specified in this Schedule as a weekly amount shall, where appropriate, be converted in accordance with sub-paragraph (1) and shall—
- (a) where rent is payable weekly, or in multiples of a week, be multiplied by 52 or 53, whichever is appropriate, and divided by the number equal to the number of weeks in that 52 or 53 week period in respect of which he is liable to pay rent; or
 - (b) in any other case, be multiplied by 365 or 366, whichever is appropriate, and divided by the number of days in that 365 or 366 day period in respect of which he is liable to pay rent.

7. In this Schedule—

“communal areas” mean areas (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation;

“fuel” includes gas and electricity and a reference to a charge for fuel includes a charge for fuel which includes an amount in respect of the facility of providing it other than a specified amount for the provision of a heating system.

SCHEDULE 2

Regulations 16 and 17

APPLICABLE AMOUNTS

Regulations 16(a) and 17(a) and (b)

PART I

personal allowances

1. The amounts specified in column (2) below in respect of each person or couple specified in column (1) shall be the amounts specified for the purposes of regulations 16(a) and 17(a) and (b)—

Status: This is the original version (as it was originally made).

(1) Person or Couple	(2) Amount
(1) Single claimant aged—	
(a) (a) less than 18;	(a) (1) (a) £19.40;
(b) (b) not less than 18 but less than 25;	(b) (b) £26.05;
(c) (c) not less than 25.	(c) (c) £33.40.
(2) Lone parent aged—	
(a) (a) less than 18;	(a) (2) (a) a£19.40;
(b) (b) not less than 18.	(b) (b) £33.40.
(3) Couple—	
(a) (a) where both members are aged less than 18;	(a) (3) (a) £38.80;
(b) (b) where at least one member is aged not less than 18.	(b) (b) £51.45.

2. The amounts specified in column (2) below in respect of each person specified in column (1) shall be the amounts specified for the purposes of regulations 16(b) and 17(c)—

(1) Child or Young Person	(2) Amount
Person aged:—	
(a) (a) less than 11;	(a) (a) £10.75;
(b) (b) not less than 11 but less than 16;	(b) (b) £16.10;
(c) (c) not less than 16 but less than 18;	(c) (c) £19.40;
(d) (d) not less than 18.	(d) (d) £26.05.

Regulations 16(c) and 17(d)

PART II

family premium

3. The amount for the purposes of regulations 16(c) and 17(d) in respect of a family of which at least one member is a child or young person shall be £6.15.
Regulations 16(d) and 17(e)

PART III

premiums

4. Except as provided in paragraph 5, the premiums specified in Part IV of this Schedule shall, for the purposes of regulations 16(d) and 17(e), be applicable to a claimant who satisfies the condition specified in paragraphs 8 to 14 in respect of that premium.

5. Subject to paragraph 6, where a claimant satisfies the conditions in respect of more than one premium in this Part of this Schedule, only one premium shall be applicable to him and, if they are different amounts, the higher or highest amount shall apply.

6.—(1) The severe disability premium to which paragraph 13 applies may be applicable in addition to either the higher pensioner premium to which paragraph 10 applies or the disability premium to which paragraph 11 applies.

(2) The disabled child premium to which paragraph 14 applies may be applicable in addition to any other premium which may apply under this Schedule.

7. 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 1979⁽⁸¹⁾ 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 approved by the Manpower Services Commission under section 2 of the Employment and Training Act 1973⁽⁸²⁾.

Lone Parent Premium

8. The condition is that the claimant is a member of a family but has no partner.

Pensioner Premium

9. The condition is that the claimant—

- (a) is a single claimant or lone parent aged not less than 60 but less than 80; or
- (b) has a partner and is, or his partner is, aged not less than 60 but less than 80.

Higher Pensioner Premium

10.—(1) Where the claimant is a single claimant or a lone parent, the condition is that—

- (a) he is aged not less than 80; or
- (b) he is aged less than 80 but not less than 60, and
 - (i) the additional condition specified in paragraph 12(1)(a) is satisfied, or
 - (ii) the claimant was in receipt of housing benefit and the disability premium was applicable to him in respect of a benefit week within 8 weeks of his 60th birthday and he has, subject to sub-paragraph (3), remained continuously in receipt of housing benefit since attaining that age.

(2) Where the claimant has a partner, the condition is that—

- (a) he or his partner is aged not less than 80; or
- (b) he or his partner is aged less than 80 but not less than 60 and either—
 - (i) the additional condition specified in paragraph 12(1)(a) is satisfied, or
 - (ii) the claimant was in receipt of housing benefit and the disability premium was applicable to him in respect of a benefit week within 8 weeks of his 60th birthday and

⁽⁸¹⁾ S.I. 1979/597.

⁽⁸²⁾ 1973 c. 50; section 2 was amended by sections 9 and 11 and Schedule 2 Part II paragraph 9 and Schedule 3 of the Employment and Training Act 1981 (c. 57).

he has, subject to sub-paragraph (3), remained continuously in receipt of housing benefit since attaining that age.

(3) For the purposes of this paragraph and paragraph 12—

- (a) once the higher pensioner premium is applicable to a claimant, if he then ceases, for a period of 8 weeks or less, to be entitled to housing benefit, he shall, on becoming re-entitled to housing benefit, thereafter be treated as having been continuously entitled to that benefit;
- (b) where sub-paragraphs (1)(b)(ii) and (2)(b)(ii) apply, if a claimant ceases to be entitled to housing benefit for a period not exceeding 8 weeks which includes his 60th birthday, he shall, on becoming re-entitled to housing benefit, thereafter be treated as having been continuously entitled to that benefit.

Disability Premium

11. The condition is that—

- (a) where the claimant is a single claimant or a lone parent, he is aged less than 60 and the additional condition specified in paragraph 12 is satisfied; or
- (b) where the claimant has a partner, either—
 - (i) the claimant is aged less than 60 and the additional condition specified in paragraph 12(1)(a) or (b) is satisfied by him, or
 - (ii) his partner is aged less than 60 and the additional condition specified in paragraph 12(1)(a) is satisfied by his partner.

Additional Condition for the Higher Pensioner and Disability Premiums

12.—(1) Subject to sub-paragraph (2) and paragraph 7, the additional condition referred to in paragraphs 10 and 11 is that either—

- (a) the claimant or, as the case may be, his partner—
 - (i) is in receipt of one or more of the following benefits: attendance allowance, mobility allowance, mobility supplement, an invalidity pension under section 15 of the Social Security Act(83) or severe disablement allowance under section 36 of that Act(84), or
 - (ii) was in receipt of either mobility allowance or invalidity pension under section 15 of the Social Security Act when entitlement to that benefit ceased solely on account of the maximum age for its payment being reached and the claimant has since remained continuously entitled to housing benefit and, if the mobility allowance or invalidity pension was payable to his partner, the partner is still a member of the family, or
 - (iii) except where paragraph (1)(a), (b), (c)(ii) or (d)(ii) of regulation 18 (patients) applies, was in receipt of attendance allowance which is no longer in payment solely on account of the claimant or, as the case may be, his partner having been or having been treated as undergoing treatment for a period of more than 4 weeks by virtue of regulation 5 of the Social Security (Attendance Allowance) (No 2) Regulations 1975(85), or

(83) Section 15 was amended by the Social Security Pensions Act 1975 (c. 60), Schedule 4 paragraph 40, the Social Security Act 1979 (c. 18) Schedule 1, paragraph 1 and Schedule 3 paragraph 7 and the Social Security and Housing Benefits Act 1982 (c. 24) Schedule 4, Part I, paragraph 10 and the Social Security Act 1986 (c. 50) section 86 and Schedule 10, Part V, paragraph 83.

(84) Section 36 was substituted by the Health and Social Security Act 1984 (c. 48), section 11; and subsection (4A) of that section inserted by the Social Security Act 1985 (c. 53) Schedule 4, paragraph 3.

(85) S.I. 1975/598; the relevant amending instrument S.I. 1983/1015.

- (iv) is provided by the Secretary of State with an invalid carriage or other vehicle under section 5(2) of the National Health Service Act 1977⁽⁸⁶⁾ (other services) or, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978⁽⁸⁷⁾ (provision of services) or receives payments by way of grant from the Secretary of State under paragraph 2 of Schedule 2 to that 1977 (additional provisions as to vehicles) Act or, in Scotland, under that section 46, or
- (v) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948⁽⁸⁸⁾ (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a regional or islands council; or
- (b) the claimant is and has, in respect of a period of not less than 28 weeks, been treated as having been incapable of work for the purposes of one or more of the provisions of the Social Security Act or Part I of the Social Security and Housing Benefits Act 1982⁽⁸⁹⁾ or, if he was in Northern Ireland for the whole or part of that period, was treated as having been incapable of work for the purposes of one or more of the comparable Northern Irish provisions.

(2) For the purposes of sub-paragraph (1)(a)(v), 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.

(3) For the purposes of sub-paragraph (1)(b), once the higher pensioner premium or the disability premium is applicable to a claimant by virtue of his satisfying the additional condition specified in that provision, if he then ceases, for a period of 8 weeks or less, to be treated as incapable of work for the purposes of the provisions specified in that provision he shall, on again becoming so incapable of work, immediately thereafter be treated as satisfying the condition in sub-paragraph (1)(b).

(4) For the purpose of sub-paragraph (1)(a)(ii) and (iii), once the higher pensioner premium is applicable to the claimant by virtue of his satisfying the condition specified in that provision, if he then ceases, for a period of 8 weeks or less, to be entitled to housing benefit, he shall on again becoming so entitled to housing benefit, immediately thereafter be treated as satisfying the condition in sub-paragraph (1)(a)(ii) and (iii).

Severe Disability Premium

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

(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 lone parent—
 - (i) he is in receipt of attendance allowance; and
 - (ii) subject to sub-paragraph (3), he has no non-dependants aged 18 or over residing with him; and

⁽⁸⁶⁾ 1977 c. 49; section 5(2) was amended and subsection (2A) added by the Public Health Laboratory Services Act 1979 (c. 23) section 1, and subsection (2B) added by section 9 of the Health and Social Security Act 1984 (c. 48).

⁽⁸⁷⁾ 1978 c. 29.

⁽⁸⁸⁾ 1948 c. 29; section 29 was amended by the National Assistance (Amendment) Act 1959 (c. 30) section 1(2); the Mental Health (Scotland) Act 1960 (c. 61) sections 113 and 114 and Schedule 4; the Local Government Act 1972 (c. 70) Schedule 23 paragraph 2; the Employment and Training Act 1973 (c. 50) Schedule 3 paragraph 3; the National Health Services Act 1977 (c. 49) Schedule 15 paragraph 6 and the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) Schedule 10 Part I.

⁽⁸⁹⁾ 1982 c. 24.

Status: This is the original version (as it was originally made).

- (iii) no-one is in receipt of an invalid care allowance under section 37 of the Social Security Act(90) 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; and
 - (ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, all the partners of that marriage are in receipt of such an allowance; and
 - (iii) subject to sub-paragraph (3), the claimant has no non-dependants aged 18 or over residing with him;
 and either there is someone in receipt of an invalid care allowance in respect of caring for only one of a couple or, in the case of a polygamous marriage for one or more but not all the partners of the marriage, or else there is no-one in receipt of such an allowance in respect of caring for either member of a couple or any partner of a polygamous marriage.
- (3) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account shall be taken of either—
 - (a) a person receiving attendance allowance; or
 - (b) a boarder.

Disabled Child Premium

- 14.** 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) has no capital or capital which, if calculated in accordance with Part VI in like manner as for the claimant except where otherwise provided, would not exceed £3,000; and
 - (b) is in receipt of attendance allowance or mobility allowance or both 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
 - (c) is blind or treated as blind within the meaning of paragraph 12.

PART IV

amounts of premiums specified in part iii

Premium	Amount
15. —	1. £8.60
(1) Lone Parent Premium	
(2) Pensioner Premium—	2
(a) (a) where the claimant satisfies the condition in paragraph 9 (a);	(a) (a) £10.65;
(b) (b) where the claimant satisfies the condition in paragraph 9(b).	(b) (b) £16.25.
(3) Higher Pensioner Premium—	3

(90) Section 137 was amended by the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), section 22(2) and the Social Security Act 1986 (c. 50) sections 37 and 86 and Schedule 11.

Premium	Amount
(a) (a) where the claimant satisfies the condition in paragraph 10(1)(a) or (b);	(a) (a) £13.05;
(b) (b) where the claimant satisfies the condition in paragraph 10(2)(a) or (b).	(b) (b) £18.60.
(4) Disability Premium—	4
(a) (a) where the claimant satisfies the condition in paragraph 11(a);	(a) (a) £13.05;
(b) (b) where the claimant satisfies the condition in paragraph 11(b).	(b) (b) £18.60.
(5) Severe Disability Premium—	5
(a) (a) where the claimant satisfies the condition in paragraph 13(2)(a);	(a) (a) £24.75;
(b) (b) where the claimant satisfies the condition in paragraph 13(2)(b)—	
(i) in a case where there is someone in receipt of an invalid care allowance;	(b) (i) £24.75;
(ii) in a case where there is no-one in receipt of such an allowance.	(ii) £49.50.
(6) Disabled Child Premium	6. £6.15 in respect of each child or young person in respect of whom the condition specified in paragraph 14 of Part III of this Schedule is satisfied.

SCHEDULE 3

Regulations 29(2), 31(2) and 36(3)

SUMS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS

1. In the case of a claimant who has been engaged in remunerative work as an employed earner—

- (a) any earnings paid or due to be paid on termination of his employment—
 - (i) by way of retirement but only if on retirement he is entitled to a retirement pension under the Social Security Act, or would be so entitled if he satisfied the contribution conditions,
 - (ii) otherwise than by retirement, except earnings to which regulation 28(1)(b) to (e) and (g) to (i) applies (earnings of employed earners);
- (b) any earnings paid or due to be paid on the interruption of his employment except earnings to which regulation 28(1)(d) and (e) applies.

2. In the case of a claimant who has been engaged in part-time employment as an employed earner immediately before he made a claim for housing benefit any earnings paid on termination or interruption of that employment except earnings to which regulation 28(1)(e) applies (earnings of employed earners).

3.—(1) If the calculation of the claimant's applicable amount includes an amount by way of a—

- (a) disability premium or severe disability premium under Schedule 2, or

- (b) (i) higher pensioner premium under Schedule 2, and
- (ii) he has attained the age of 60 and immediately before attaining that age was engaged in employment and entitled under sub-paragraph (a) to a disregard of £15, and
- (iii) he has continued after that age in employment,

£15; but, notwithstanding regulation 19 (calculation of income and capital of members of a claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £15.

(2) For the purposes of sub-paragraph (1)(b)(iii) no account shall be taken of any period not exceeding 8 consecutive weeks occurring on or after the date on which the claimant attained the age of 60 during which he ceased to be engaged in employment or to be entitled to housing benefit.

4. If an amount by way of a lone parent premium under Schedule 2 is included in the calculation of the claimant's applicable amount, £15.

5. In a case where paragraph 3 does not apply to the claimant and he is one of a couple and a member of that couple is in employment, £10; but, notwithstanding regulation 19 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £10.

6.—(1) In a case to which neither paragraph 3 nor 4 applies to the claimant, £15 of earnings derived from one or more employments as—

- (a) a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Acts 1947 to 1959⁽⁹¹⁾;
- (b) an auxiliary coastguard in respect of coast rescue activities;
- (c) a person engaged part-time in the manning or launching of a life boat;
- (d) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979⁽⁹²⁾;

but, notwithstanding regulation 19 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except to the extent specified in sub-paragraph (2).

(2) If the claimant's partner is engaged in employment –

- (a) specified in sub-paragraph (1), so much of his earnings as would not in aggregate with the amount of the claimant's earnings disregarded under this paragraph exceed £15;
- (b) other than one specified in sub-paragraph (1), so much of his earnings from that employment up to £10 as would not in aggregate with the claimant's earnings disregarded under this paragraph exceed £15.

7. Where the claimant is engaged in one or more employments specified in paragraph 6(1), but his earnings derived from such employments are less than £15 in any week and he is also engaged in any other employment so much of his earnings from that other employment, up to £5 if he is a single claimant, or up to £10 if he has a partner, as would not in aggregate with the amount of his earnings disregarded under paragraph 6 exceed £15.

8. In a case to which none of the paragraphs 3 to 7 applies, £5.

⁽⁹¹⁾ 1947 c. 41, 1951 c. 27, 1959 c. 44.

⁽⁹²⁾ S.I. 1979/591; Part 1 of Schedule 3 substituted by S.I. 1980/1975.

9. Any amount or the balance of any amount which would fall to be disregarded under paragraph 17, 18 or 27 of Schedule 4 had the claimant's income which does not consist of earnings been sufficient to entitle him to the full disregard thereunder.

10. Where a claimant is on income support, his earnings.

11. Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

12. Where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

13. Any earnings of a child or young person except earnings to which paragraph 14 applies.

14. In the case of earnings of a young person who has ceased full-time education for the purposes of section 2 of the Child Benefit Act 1975 (meaning of child)(93) and who is engaged in remunerative work—

- (a) if an amount by way of a disabled child premium under Schedule 2 is included in the calculation of his applicable amount, £15;
- (b) in any other case, £5.

15. In this Schedule “part-time employment” means employment in which the person is engaged on average for less than 24 hours a week.

SCHEDULE 4

Regulation 33(2)

SUMS TO BE DISREGARDED IN THE CALCULATION OF INCOME OTHER THAN EARNINGS

1. Any amount paid by way of tax on income which is to be taken into account under regulation 33 (calculation of income other than earnings).

2. Any payment in respect of any expenses incurred by a claimant who is—

- (a) engaged by a charitable or voluntary body, or
- (b) a volunteer,

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 35(5) (notional income).

3. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

4. Where a claimant is on income support, the whole of his income.

5. Any mobility allowance under section 37A of the Social Security Act(94).

6. Any concessionary payment made to compensate for the non-payment of

- (a) any payment specified in paragraph 5 or 8;
- (b) income support.

(93) 1975 c. 61 was amended by sections 4, 8 and 21 and Schedule 5 Part I of the Social Security Act 1980 (c. 30) and section 70 of the Social Security Act 1986 (c. 50).

(94) Section 37A was inserted by section 22(1) of the Social Security Pensions Act 1975 (c. 60) and amended by the National Health Service Act 1977 (c. 49) Schedule 15 paragraph 64; the Social Security Act 1979 (c. 18) section 3 and the Social Security Act 1986 (c. 50) sections 71 and 86 and Schedule 11.

7. Any mobility supplement under article 26A of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983(95) (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(96) or any payment intended to compensate for the non-payment of such a supplement.

8. Any attendance allowance.

9. Any payment to the claimant as holder of the Victoria Cross or of the George Cross or any analogous payment.

10. Any sum in respect of a course of study attended by a child or young person payable by virtue of Regulations made under section 81 of the Education Act 1944(97) (assistance by means of scholarships or otherwise), or by virtue of section 2(1) of the Education Act 1962(98) (awards for courses of further education), or section 49 of the Education (Scotland) Act 1980(99) (power to assist persons to take advantage of educational facilities).

11. In the case of a claimant attending a training course under the Adult and Youth Training Programme established under section 2(1) of the Employment and Training Act 1973(100) or a course at an employment rehabilitation centre established under that section—

- (a) travelling expenses reimbursed to the claimant; and
- (b) if he receives an allowance under the provision of section 2(2)(d) of that Act such amount, if any, of that allowance expressed to be a living away from home allowance, but only in respect of the dwelling he normally occupies as his home,

but not any part of any allowance under that section expressed to be a personal allowance.

12. Any Job Start Allowance payable under section 2(1) of the Employment and Training Act 1973.

13. Subject to paragraph 31, £5 of any charitable payment or of any voluntary payment made or due to be made (whether or not so made) at regular intervals other than a payment which is made by a person for the maintenance of any member of his family or his former partner or of his children; and, for the purposes of this paragraph, where a number of such charitable or voluntary payments falls to be taken into account in any one week they shall be treated as though they were one such payment.

14. Subject to paragraph 33, £5 of any of the following, namely—

- (a) war disablement pension or war widow's pension or a payment made to compensate for the non-payment of such a pension;
- (b) a pension paid under the social security scheme of a country outside Great Britain and which either –
 - (i) is analogous to a war disablement pension, or
 - (ii) is paid to a war widow in respect of a person's death but is otherwise analogous to such a pension;
- (c) a pension paid 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, to victims of National Socialist persecution.

(95) S.I. 1983/883; article 26A was added by S.I. 1983/1116 and amended by S.I. 1983/1521 and 1986/592.

(96) S.I. 1983/686, amended by S.I. 1983/1164 and 1540 and 1986/628.

(97) 1944 c. 31, amended by S.I. 1964/490.

(98) 1962 c. 12; section 2(1) was substituted by section 19 of and Schedule 5 to the Education Act 1980 (c. 20).

(99) 1980 c. 44.

(100) 1973 c. 50; section 2 was amended by sections 9 and 11 and Schedule 2 Part II paragraph 9 and Schedule 3 of the Employment and Training act 1981 (c. 57).

15.—(1) Any income derived from capital to which the claimant is or is treated under regulation 44 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraphs 1, 2, 4, 7 or 13 of Schedule 5.(113) (deduction of tax from certain loan interest) on a payment of relevant loan interest

(2) Income derived from capital disregarded under paragraphs 2 or 4 of Schedule 5 but only to the extent of any mortgage repayments and payment of rates made in respect of the dwelling or premises in the period during which that income accrued.

16. Where a claimant receives income under an annuity purchased with a loan which satisfies the following conditions—

- (a) that the loan was made as part of a scheme under which not less than 90% of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in this paragraph referred to as “the annuitants”) who include the person to whom the loan was made;
- (b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;
- (c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;
- (d) that the loan was secured on a dwelling in Great Britain and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling; and
- (e) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid, the amount, calculated on a weekly basis, equal to—
 - (i) where, or insofar as, section 26 of the Finance Act 1982(101) (deduction of tax from certain loan interest) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the basic rate for the year of assessment in which the payment of interest becomes due,
 - (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

17. Where the claimant makes a parental contribution in respect of a student attending a course at an establishment in the United Kingdom or undergoing education in the United Kingdom, which contribution has been assessed for the purposes of calculating—

- (a) under regulations made in exercise of the powers conferred by section 1 of the Education Act 1962(102), that student’s award under that section;
- (b) that student’s award under section 2 of that Act; or
- (c) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980(103), that student’s bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section, an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

(113) 1982 c. 39.

(101) 1982 c. 39.

(102) 1962 c. 12; sections 1 and 2 were substituted by section 19 Schedule 5 of the Education Act 1980 (c. 20) and section 1(3) amended by section 4 of the Education (Grants and Awards) Act 1984 (c. 11) and see the Education (Mandatory Awards) Regulations 1987 (S.I. 1987/1261).

(103) 1980 c. 44 and see Education Authority Bursaries (Scotland) Regulations 1986 (S.I. 1986/1227).

18.—(1) Where the claimant is the parent of a student aged under 25 in advanced education who either—

- (a) is not in receipt of any award or grant in respect of that education; or
 - (b) is in receipt of an award under section 2 of the Education Act 1962 (discretionary awards) or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980, and the claimant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 17, an amount specified in sub-paragraph (2) in respect of each week during the student's term.
- (2) For the purposes of sub-paragraph (1), the amount shall be equal to—
- (a) the weekly amount of the payments; or
 - (b) the amount by way of a personal allowance for a single claimant under 25 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b), whichever is less.

19. Any payment made to the claimant by a child or young person or a non-dependant.

20. Where the claimant occupies a dwelling as his home which is also occupied by a person other than one to whom paragraph 19 refers and that person is contractually liable to make payments in respect of his occupation of the dwelling to the claimant—

- (a) £4 of any payment made by that person; and
- (b) a further £6.70, where that payment is inclusive of an amount for heating.

21. Any income in kind.

22. Any income which is payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of that income.

23.—(1) Any payment made to the claimant in respect of a person who is a member of his family—

- (a) in accordance with a scheme approved by the Secretary of State under section 50(4) of the Adoption Act 1958⁽¹⁰⁴⁾ or, as the case may be, section 51 of the Adoption (Scotland) Act 1978⁽¹⁰⁵⁾ (schemes for payments of allowances to adopters);
- (b) which is payment made by a local authority, in pursuance of section 34(6) or, as the case may be, section 50 of the Children Act 1975⁽¹⁰⁶⁾ (contributions to a custodian towards the cost of the accommodation and maintenance of a child); to the extent specified in sub-paragraph (2).

(2) In the case of a child or young person—

- (a) to whom regulation 36(2) applies (capital in excess of £3,000), the whole payment;
- (b) to whom that regulation does not apply, so much of the weekly amount of the payment as exceeds the amount included under Schedule 2 in the calculation of the claimant's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any.

24. Any payment made by a local authority to the claimant with whom a person is boarded out by virtue of arrangements made under section 21(1)(a) of the Child Care Act 1980⁽¹⁰⁷⁾ or, as the case may be, section 12 of the Social Work (Scotland) Act 1968⁽¹⁰⁸⁾ or by a voluntary organisation under

⁽¹⁰⁴⁾ 1958 (7 & 8 Eliz. 2) c.5; sub-section (4) of section 50 was added by section 32 of the Children Act 1975 (c. 72).

⁽¹⁰⁵⁾ 1978 c. 28.

⁽¹⁰⁶⁾ 1975 c. 72, as amended by section 64 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).

⁽¹⁰⁷⁾ 1980 c. 5, amended by section 9 and Schedule 2 paragraph 49 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41).

⁽¹⁰⁸⁾ 1968 c. 49.

section 61 of the 1980 Act or by a care authority under regulation 9 of the Boarding Out and Fostering of Children (Scotland) Regulations 1985(109) (provision of accommodation and maintenance for children in care).

25. Any payment made by a health authority, local authority or voluntary organisation to the claimant in respect of a person who is not normally a member of the claimant's household but is temporarily in his care.

26. Any payment made under section 1 of the Child Care Act 1980 or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 (duty of local authorities to promote welfare of children).

27. An amount equal to any maintenance payment made by the claimant to his former partner or in respect of his children other than children who are members of his household.

28. Any payment received under an insurance policy taken out to insure against the risk of being unable to maintain repayments on a loan for the purchase of the dwelling which the claimant occupies as his home and secured on that dwelling to the extent that it does not exceed the amount calculated, on a weekly basis, of that repayment.

29. Any payment of income which by virtue of regulation 40 (income treated as capital) is to be treated as capital.

30. Any social fund payment.

31. Any payment under paragraph 2 of Schedule 6 to the Act (pensioners' Christmas bonus).

32. Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

33. The total of a claimant's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 19(3) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 54(2)(b) and regulation 55(1)(e) (calculation of covenant income where a contribution assessed, covenant income where no grant income or no contribution is assessed) and paragraphs 13 and 14 shall in no case exceed £5 per week.

SCHEDULE 5

Regulation 38(2)

CAPITAL TO BE DISREGARDED

1. The dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated; but, notwithstanding regulation 19 (calculation of income and capital of members of claimant's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

2. Any premises acquired for occupation by the claimant which he intends to occupy within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises.

3. Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the claimant as his home which is to be used for the purchase of other premises intended for

(109) S.I. 1985/1799.

such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase.

4. Any premises owned by the claimant occupied in whole or in part by a partner or relative of any member of the family where that person is either aged 60 or over or incapacitated.

5. Where a claimant is on income support, the whole of his capital.

6. Any reversionary interest.

7. The assets of any business owned in whole or in part by the claimant and for the purposes of which he is engaged as a self-employed earner, or if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

8. Any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of,—

- (a) any payment specified in paragraphs 5, 7 or 8 of Schedule 4;
- (b) an income-related benefit or supplementary benefit, family income supplement under the Family Income Supplement Act 1970⁽¹¹⁰⁾ or housing benefit under Part II of the Social Security and Housing Benefits Act 1982,

but only for a period of 52 weeks from the date of the receipt of arrears or of the concessionary payment.

9. Any sum—

- (a) paid to the claimant in consequence of damage to, or loss of the home or any personal possession and intended for its repair or replacement; or
- (b) acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvement to the home,

which is to be used for the intended purpose, for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to effect the repairs, replacement or improvement.

10. Any sum—

- (a) deposited with a housing association as defined in section 189(1) of the Housing Associations Act 1985⁽¹¹¹⁾ or section 338(1) of the Housing (Scotland) Act 1987⁽¹¹²⁾ as a condition of occupying the home;
- (b) which was so deposited and which is to be used for the purchase of another home, for the period of 26 weeks or such longer period as may be reasonable in the circumstances to enable the claimant to complete the purchase.

11. Any personal possessions except those which have been acquired by the claimant with the intention of reducing his capital in order to secure entitlement to housing benefit or to increase the amount of that benefit.

12. The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

13. Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant the value of the trust fund and the value of the right to receive any payment under that trust, for a period of 2 years or such longer period as is reasonable in the circumstances beginning—

⁽¹¹⁰⁾ 1970 c. 55.

⁽¹¹¹⁾ 1985 c. 69.

⁽¹¹²⁾ 1987 c. 26.

- (a) if, at the date of the payment the claimant or his partner is in receipt of an income-related benefit, on that date;
- (b) in any other case, on the date on which an income-related benefit is first payable to the claimant or his partner after the date of the payment,

but, for the purposes of regulations 16, 17 and 36(2) (applicable amounts, polygamous marriage and modifications in respect of children and young persons), in calculating the capital of a child or young person there shall be no limit as to the period of disregard under this paragraph.

14. The value of the right to receive any income under a life interest or from a liferent.

15. The value of the right to receive any income which is disregarded under paragraph 9 of Schedule 3 or paragraph 22 of Schedule 4.

16. The surrender value of any policy of life insurance.

17. Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

18. Any payment made under section 1 of the Child Care Act 1980 or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 (duty of local authorities to promote welfare of children).

19. Any social fund payment.

20. Any refund of tax which falls to be deducted under section 26 of the Finance Act 1982⁽¹¹³⁾ (deduction of tax from certain loan interest) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements to the home.

21. Any capital which by virtue of regulation 34 (capital treated as income) is to be treated as income.

22. Where any payment of capital is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

SCHEDULE 6

Regulations 77 and 79

MATTERS TO BE INCLUDED IN THE NOTICE OF DETERMINATION

PART I

general

1. The statement of matters to be included in any notice of determination issued by an appropriate authority to a person, and referred to in regulation 77 (notification of determinations) and 79 (review of determinations) are those matters set out in the following provisions of this Schedule.

2. Every notice of determination shall include a statement as to the right of any person affected by that determination to request a written statement under regulation 80 (requests for statement of reasons) and the manner and time in which to do so.

3. Every notice of determination shall include a statement as to the right of any person affected by that determination to make written representations in accordance with regulation 79(2) and the manner and time in which to do so.

⁽¹¹³⁾ 1982 c. 39.

Status: This is the original version (as it was originally made).

4. Every notice of determination following written representations in accordance with regulation 79(2) (review of determinations) shall include a statement as to whether the original determination in respect of which the person made his representations has been confirmed or revised and where the appropriate authority has not revised the determination the reasons why not.

5. Every notice of determination following written representations in accordance with regulation 79(2) (review of determinations) shall include a statement as to the right of any person affected by that determination to request a further review in accordance with regulation 81 (further review of determinations) and of the manner and time in which to do so.

6. An authority may include in the notice of determination any other matters not prescribed by this Schedule which it sees fit, whether expressly or by reference to some other document available without charge to the person.

7. Parts II, III and VI of this Schedule shall apply only to the notice of determination given on a claim.

8. Where a notice of determination is given following a review of an earlier determination—

- (a) made of the authority's own motion which results in a revision of that earlier determination; or
- (b) made following written representations in accordance with regulation 79(2) (review of determinations), whether or not resulting in a revision of that earlier determination,

that notice shall, subject to paragraph 6, contain a statement only as to all the matters reviewed.

PART II

awards where income support is payable

9. Where a person on income support is awarded housing benefit, the notice of determination shall include a statement as to—

- (a) his weekly eligible rates, if any; and
- (b) his weekly eligible rent, if any; and
- (c) the amount and an explanation of any deduction made under paragraph 5(2) of Schedule 1 (fuel deductions), if any, and that the deduction may be varied if he provides to the authority evidence on which it may estimate the actual or approximate amount of that service charge; and
- (d) the amount of and the category of non-dependant deductions made under regulation 63, if any; and
- (e) the normal weekly amount of rent allowance, rent rebate or rate rebate, as the case may be, to which he is entitled; and
- (f) in the case of a rent allowance and a rate rebate paid as if it were a rent allowance, the day of payment, and the period in respect of which payment of that allowance is to be made; and
- (g) the first day of entitlement to an allowance or rebate; and
- (h) the date on which his benefit period will end if not terminated earlier; and
- (i) his duty to notify any change of circumstances which might affect his entitlement to, or the amount of, housing benefit and (without prejudice to the extent of the duty owed under regulation 75 (duty to notify changes of circumstances)) the kind of change of circumstances which is to be notified, either upon the notice or by reference to some other document available to him on application and without charge.

PART III

awards where no income support is payable

10. Where a person is not on income support but is awarded housing benefit, the notice of determination shall include a statement as to—

- (a) the matters set out in paragraph 9; and
- (b) his applicable amount and how it is calculated; and
- (c) his weekly earnings; and
- (d) his weekly income other than earnings.

PART IV

awards where direct payments made to landlords

11. Where a determination has been made under regulation 93 or 94 (circumstances in which payment is to be made, or may be made, direct to a landlord), the notice of determination shall include a statement as to the amount of housing benefit which is to be paid direct to the landlord and the date from which it is to be so paid, and the notice shall be sent to both the claimant and the landlord.

PART V

notice where income of non-dependant is treated as claimant's

12. Where an authority makes a determination under regulation 20 (circumstances in which income and capital of a non-dependant is to be treated as claimant's) the notice of determination shall contain a statement as to—

- (a) the fact that a determination has been made by reference to the income and capital of the claimant's non-dependant; and
- (b) the appropriate authority's reasons for making that determination.

PART VI

notice where no award is made

13. Where a person is not awarded housing benefit—

- (a) either on grounds of income or because the amount of any housing benefit is less than the minimum housing benefit prescribed by regulation 64, the notice of determination shall include a statement as to—
 - (i) the matters set out in paragraphs 9(a) to (d), and in a case where the amount of entitlement is less than the minimum amount of housing benefit prescribed, paragraph 9(e) also, and
 - (ii) the matters set out in paragraphs 10(b) to (d) where the person is not on income support, and
 - (iii) where the amount of entitlement is less than the minimum amount of housing benefit prescribed, that fact and that such entitlement is not payable;
- (b) for any reason other than one mentioned in sub-paragraph (a), the notice of determination shall include a statement as to the reason why no award has been made.

PART VII

notice where recoverable overpayment

14. Where the appropriate authority makes a determination that there is a recoverable overpayment within the meaning of regulation 99 (recoverable overpayments), the notice of determination shall include a statement as to—

- (a) the fact that there is a recoverable overpayment; and
- (b) the reason why there is a recoverable overpayment; and
- (c) the amount of the recoverable overpayment; and
- (d) how the amount of the recoverable overpayment was calculated; and
- (e) the benefit weeks to which the recoverable overpayment relates in each benefit period or, where the recoverable overpayment relates to a past period of entitlement as a result of backdating a claim under regulation 72(14) (time and manner in which claims are to be made), in that past period; and
- (f) where recovery of the recoverable overpayment is to be made by deduction from a rent allowance or rebate or rate rebate, as the case may be, that fact and the amount of the deduction.

SCHEDULE 7

Regulation 81(3)

CONSTITUTION OF REVIEW BOARDS

1. A Review Board appointed by an authority listed in column (1) of the Table below shall consist of not less than three of the persons specified in relation to that authority in column (2) of that Table.

Table

(1) Authority	(2) Composition of Board
1. A local authority other than the Common Council of the City of London.	1. Councillors of that authority
2. The Common Council of the City of London.	2. Persons who are mayor, aldermen or common councilmen.
3. A New Town Corporation.	3. Members of that development corporation established under the New Towns Act 1981(114) or the New Towns (Scotland) Act 1968(115) or, as the case may be, of the Commission for the New Towns.
4. The Development Board for Rural Wales.	4. Members of that Board.
5. The Scottish Special Housing Association.	5. Members of the Council of Management.

2. The members of a Review Board shall appoint one of their number to be the Chairman.

(114) 1981 c. 64.
(115) 1968 c. 16.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for matters concerning entitlement to, the amount of and the claiming and payment of housing benefit.

Part I contains general provisions affecting the citation, commencement and interpretation of the Regulations (regulations 1 to 4).

Part II makes provision in regard to the circumstances in which a person is or is not to be treated as occupying a dwelling as his home and is or is not to be treated as liable to make payments for a dwelling (regulations 5 to 7).

Part III provides what payments by way of rent or rates are to be eligible for the payment of housing benefit (regulations 8 to 12).

Part IV specifies the circumstances in which a person is or is not to be treated as responsible for another person and who is to be treated as a member of the same household as a claimant for housing benefit (regulations 13 to 15).

Part V and Schedule 2 provide for the calculation of the applicable amount in respect of a person's entitlement to housing benefit, by reference to which the amount of his benefit is calculated. Provision is made with respect to polygamous marriages and persons receiving free in-patient treatment in a hospital (regulations 16 to 18).

Part VI provides for the calculation of the income and capital of a claimant for housing benefit, the earnings of employed and self-employed earners, the treatment of income other than earnings including notional income, with the sums to be disregarded set out in Schedules 3 and 4. Calculation of capital is also dealt with, with capital to be disregarded set out in Schedule 5 (regulations 19 to 45).

Part VII provides for the treatment of students, their entitlement to housing benefit (Chapter II) and the calculation of their income (Chapter III) (regulations 46 to 60).

Part VIII specifies the maximum amount of housing benefit payable in any case and any deductions which are to be made from that maximum (regulations 61 to 64).

Part IX governs the start of entitlement to housing benefit and the ending of the benefit period, in particular upon a relevant change in the claimant's circumstances. It also provides for calculating the weekly entitlement to benefit (regulations 65 to 70).

Part X provides for the making of claims and the duty to notify changes of circumstances (regulations 71 to 75).

Part XI provides for the determination of questions arising on claims and the review of such determinations (regulations 76 to 87).

Part XII provides for the payment of housing benefit including to whom payments are to be made and the withholding of benefit (regulations 88 to 97).

Part XIII provides for the recovery of overpaid benefit, what constitutes a recoverable overpayment and the method of recovery (regulations 96 to 105).

These Regulations are made before the expiry of 12 months from the commencement of provisions under which they are made: they are accordingly exempt by section 61(5) of the Social Security Act 1986, from reference to the Social Security Advisory Committee and have not been so referred.

Status: *This is the original version (as it was originally made).*