

1988 No. 1971

**HOUSING, ENGLAND AND WALES  
HOUSING, SCOTLAND**

**The Housing Benefit (General) Amendment No. 4  
Regulations 1988**

*Made* - - - - - *10th November 1988*

*Laid before Parliament* *14th November 1988*

*Coming into force* - *5th December 1988*

The Secretary of State for Social Security in exercise of powers conferred by sections 20(8) and (12)(g), 22(1), (8) and (9), 29(7), 51(1)(m) and 84(1) of the Social Security Act 1986(a) and section 166(1) to (3A) of the Social Security Act 1975(b) and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of authorities concerned(c), and after agreement by the Social Security Advisory Committee that proposals to make these Regulations in so far as they are made under the powers in section 51(1) of the Social Security Act 1986 should not be referred to it(d), by this instrument which is otherwise 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:-

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Housing Benefit (General) Amendment No. 4 Regulations 1988 and shall come into force on 5th December 1988.

(2) In these Regulations “the General Regulations” means the Housing Benefit (General) Regulations 1987(e).

**Amendment of regulation 2 of the General Regulations**

2. In regulation 2(1) of the General Regulations (interpretation) for the definition of “polygamous marriage” there shall be substituted the following definition—

““polygamous marriage” means any marriage during the subsistence of which a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy;”.

**Amendment of regulation 5 of the General Regulations**

3. In regulation 5(9) of the General Regulations (circumstances in which a person is

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

(b) 1975 c.14; section 166(3A) was inserted by section 62(1) of the Social Security Act 1986 and section 166(1) to (3A) was applied by section 83(1) of that Act.

(c) See section 61(7) of the Social Security Act 1986.

(d) See section 10(2)(b) of the Social Security Act 1980 (c.30). Section 10 was amended by paragraph 98 of Schedule 10 to the Social Security Act 1986.

(e) S.I. 1987/1971, amended by S.I. 1988/661, 909 and 1444.

or is not to be treated as occupying a dwelling as his home) in paragraph (b) of the definition of "residential accommodation" there shall be added at the end the words "where board is available to the claimant".

#### **Amendment of regulation 8 of the General Regulations**

4. In regulation 8(2)(b)(ii) of the General Regulations (eligible housing costs) for the word "or;" there shall be substituted the words "where board is available to the claimant; or".

#### **Amendment of regulation 10 of the General Regulations**

5. In regulation 10(1)(i) of the General Regulations (rent) after the words "a dwelling" there shall be inserted the words "which is a building or part of one".

#### **Amendment of regulation 21 of the General Regulations**

6. In regulation 21(2) of the General Regulations (calculation of income on a weekly basis) for the words "regulations 27(3)" to the end of that regulation there shall be substituted the words "regulations 34 and 35 (capital treated as income and notional income).".

#### **Omission of regulation 27 of the General Regulations**

7. Regulation 27 of the General Regulations (treatment of charitable or voluntary payments) shall be omitted.

#### **Amendment of regulation 33 of the General Regulations**

8. In regulation 33(1) of the General Regulations (calculation of income other than earnings) for the words "regulation 27(3) and 34 (charitable or voluntary payments and capital treated as income)" there shall be substituted the words "regulation 34 (capital treated as income)".

#### **Amendment of regulation 35 of the General Regulations**

9. In regulation 35 of the General Regulations (notional income)-

(a) for paragraph (3) there shall be substituted the following paragraph-

"(3) Any payment of income, other than a payment of income made under the Macfarlane Trust or the Independent Living Fund, made-

(a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, eligible rent or rates or both, of that single claimant or, as the case may be, of any member of that family;

(b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.";

(b) after paragraph (7) there shall be added the following paragraph-

"(8) In paragraph (3) the expression "ordinary clothing or footwear" means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.".

#### **Amendment of regulation 38 of the General Regulations**

10. In regulation 38(1) of the General Regulations (calculation of capital) for the words "regulations 27(2) and 40 (treatment of charitable or voluntary payments and income treated as capital)" there shall be substituted the words "regulation 40 (income treated as capital)".

#### **Amendment of regulation 40 of the General Regulations**

11. In regulation 40 of the General Regulations (income treated as capital)–
- (a) in paragraph (1) the word “annual” shall be omitted; and after the word “applies” there shall be inserted the words “and paid at intervals of at least one year”;
  - (b) in paragraph (4) for the words “or 13” there shall be substituted the words “, 13 or 24 to 27”.

#### **Amendment of regulation 43 of the General Regulations**

12. In regulation 43 of the General Regulations (notional capital)–
- (a) for paragraph (3) there shall be substituted the following paragraph–
    - “(3) Any payment of capital, other than a payment of capital made under the Macfarlane Trust or the Independent Living Fund, made–
      - (a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party’s family) shall be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, eligible rent or rates or both, of that single claimant or, as the case may be, of any member of that family;
      - (b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.”;
- (b) after paragraph (6) there shall be added the following paragraph–
  - “(7) In paragraph (3) the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use but does not include school uniforms, or clothing or footwear used solely for sporting activities.”.

#### **Amendment of regulation 44 of the General Regulations**

13. In regulation 44 of the General Regulations (capital jointly held) at the end there shall be added the words “and the foregoing provisions of this Chapter shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.”.

#### **Amendment of regulation 45 of the General Regulations**

14. In regulation 45(3) of the General Regulations (calculation of tariff income from capital) for the words “regulations 27(2) and 40 (charitable or voluntary payments and income treated as capital)” there shall be substituted the words “regulation 40 (income treated as capital)”.

#### **Amendment of regulation 46 of the General Regulations**

15. In regulation 46 of the General Regulations (interpretation) in the definition of “education authority” after the words “Education (Scotland) Act” there shall be inserted “1980”.

#### **Amendment of regulation 66 of the General Regulations**

16. In regulation 66 of the General Regulations (benefit period)–
- (a) in paragraph (3) for the words “paragraph (4)” there shall be substituted the words “paragraph (3A) or (4)”;
  - (b) after paragraph (3) there shall be inserted the following paragraph–
    - “(3A) Where, in Scotland, an award is made in consequence of a claim made in the period from 5th December 1988 to 31st March 1989 the benefit period shall not exceed 80 benefit weeks.”.

### **Amendment of regulation 105 of the General Regulations**

17. In regulation 105(1) of the General Regulations (recovery of overpayments from prescribed benefits) sub-paragraph (d) shall be omitted.

### **Amendment of Schedule 2 to the General Regulations**

18. In Schedule 2 to the General Regulations (applicable amounts)–

(a) in paragraph 12–

(i) in sub-paragraph (1)(a)(i) after the words “of that Act” there shall be inserted the words “but, in the case of invalidity pension or severe disablement allowance only where it is paid in respect of him”;

(ii) in sub-paragraph (1)(b) for the words “a period” there shall be substituted the words “a continuous period”;

(iii) after sub-paragraph (4) there shall be added the following sub-paragraph–

“(5) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to a claimant by virtue of his satisfying the additional condition specified in that provision, he shall continue to be treated as satisfying that condition for any period spent by him in undertaking a course of training provided under section 2 of the Employment and Training Act 1973(a).”;

(b) after paragraph 14 there shall be inserted the following paragraph–

“Persons in receipt of concessionary payments

14A. For the purpose of determining whether a premium is applicable to a person under paragraphs 12 to 14, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.”.

### **Amendment of Schedule 3 to the General Regulations**

19. In Schedule 3 to the General Regulations (sums to be disregarded in the calculation of earnings)–

(a) for paragraphs 1 and 2 there shall be substituted the following paragraphs–

“1. In the case of a claimant who has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged–

(a) any earnings paid or due to be paid in respect of that employment which has been terminated–

(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) (earnings of employed earners) applies;

(b) any earnings paid or due to be paid in respect of that employment which has been interrupted 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 or had the employment been in Great Britain would have been so engaged before he made a claim for housing benefit, any earnings paid or due to be paid in respect of that employment which has been terminated or interrupted before the claim is made except earnings to which regulation 28(1)(e) applies.”;

(b) in paragraph 3–

(i) in sub-paragraph (1)(b)(ii) for the words “he has attained the age of 60 and immediately before attaining that age” there shall be substituted the words

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(a) 1973 c.50; section 2 was substituted by the Employment Act 1988 (c.19), section 25.

“he or his partner has attained the age of 60 and immediately before attaining that age either”;

- (ii) in sub-paragraph (1)(b)(iii) for the words “he has” there shall be substituted the words “either he or his partner has”.

#### **Amendment of Schedule 4 to the General Regulations**

**20.** In Schedule 4 to the General Regulations (sums to be disregarded in the calculation of income other than earnings)–

(a) in paragraph 15–

(i) in sub-paragraph (1) for the words “or 13” there shall be substituted the words “, 13 or 24 to 27”;

(ii) in sub-paragraph (2) for the words “or 4” there shall be substituted the words “, 4 or 24 to 27”;

(b) in paragraph 24 for the words “section 12” there shall be substituted the words “section 21”;

(c) after paragraph 35 there shall be added the following paragraphs–

“36. Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983(a).

37. Any resettlement benefit which is paid to the claimant by virtue of regulation 3 of the Social Security (Hospital In-Patients) Amendment (No. 2) Regulations 1987(b).

38. Any payment to a juror or witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

39. Any housing benefit in the form of a community charge rebate.”.

#### **Amendment of Schedule 5 to the General Regulations**

**21.** In Schedule 5 to the General Regulations (capital to be disregarded)–

(a) in paragraph 2 after the words “intends to occupy” there shall be inserted the words “as his home”;

(b) for paragraph 4 there shall be substituted the following paragraph–

“4. Any premises occupied in whole or in part–

(a) by a partner or relative of any member of the family where that person is either aged 60 or over or incapacitated;

(b) by the former partner of the claimant as his home; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced.”;

(c) for paragraph 26 there shall be substituted the following paragraph–

“26. Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.”;

(d) after paragraph 28 there shall be added the following paragraphs–

“29. Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983.

30. The value of the right to receive an occupational pension.

31. The value of the right to receive any rent.

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(a) S.I. 1983/1399.

(b) S.I. 1987/1683.

32. Any payment in kind made by a charity.

33. Any payment not exceeding £200 made under section 2 of the Employment and Training Act 1973(a) (functions of the Secretary of State) as a training bonus to a person participating in an arrangement for training made under that section, but only for a period of 52 weeks from the date of the receipt of that payment.

34. Any housing benefit in the form of a community charge rebate.”.

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

10th November 1988

*Peter Lloyd*  
Parliamentary Under-Secretary of State,  
Department of Social Security

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further amend the Housing Benefit (General) Regulations 1987.

They terminate the arrangements for treating charitable and voluntary payments in excess of £250 as income; and make a number of other miscellaneous amendments to the rules for calculating income and capital, including provision for the disregard of payments made by the Secretary of State to compensate for the loss of benefit under the reformed scheme, and for the disregard of community charge rebates, any training bonus not exceeding £200 paid under the Employment Training scheme, and certain other specified payments (regulations 6 to 14 and 19 to 21).

The Regulations also restrict payments under a rental purchase agreement which constitute eligible rent to payments made in respect of a dwelling which forms part of a building (regulation 5); extend, in Scotland, the maximum benefit period on a claim made before 1 April 1989 to 80 weeks (regulation 16); treat a concessionary payment as if it were a payment of benefit for the purpose of determining entitlement to the pensioner and disability premiums and provide for a person entitled to a disability premium to be treated as satisfying the incapacity condition when undertaking a period of approved training (regulation 18).

In addition, they delete the provision for the recovery of overpayments of benefit in Northern Ireland as a result of the corresponding provision to that effect made by section 29(8) of the Social Security Act 1986 inserted by the Social Security Act 1988 (c.7) (regulation 17); amend the definition of a polygamous marriage (regulation 2) and make certain other minor amendments (regulations 3, 4 and 15).

These Regulations, except in so far as they are made under the powers in section 51 of the Social Security Act 1986, are made before the expiry of 12 months from the commencement of the 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.

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(a) 1973 c.50; section 2 was substituted by the Employment Act 1988 (c.19), section 25.

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