

1990 No. 574

SOCIAL SECURITY

**The Family Credit (General) Amendment Regulations
1990**

<i>Made</i> - - - -	<i>12th March 1990</i>
<i>Laid before Parliament</i>	<i>13th March 1990</i>
<i>Coming into force</i> -	
<i>regulations 1, 11, 14(f) and 15(a)</i>	<i>3rd April 1990</i>
<i>regulations 2 to 10, 12, 13, 14(a) to (e) and 15(b)</i>	<i>10th April 1990</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 20(5)(c), (12)(c), (d) and 22(8), (8A) and (9), 51(1)(h) and section 84(1) of the Social Security Act 1986(a) and section 166(1) to (3) of the Social Security Act 1975(b) and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals to make these regulations should not be referred to it(c), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Family Credit (General) Amendment Regulations 1990 and shall, subject to paragraph (2), come into force as follows—

- (a) regulations 1, 11, 14(f) and 15(a), on 3rd April 1990;
- (b) regulations 2 to 10, 12, 13, 14(a) to (e) and 15(b), on 10th April 1990.

(2) In any case in which these Regulations and the Social Security Benefits Up-Rating Order 1990(d) come into force on the same day, these Regulations shall come into force immediately after that Order.

(3) In these Regulations “the General Regulations” means the Family Credit (General) Regulations 1987(e).

Amendment of regulation 4 of the General Regulations

2. In regulation 4 of the General Regulations (remunerative work), after paragraph (3) there shall be added the following paragraph—

“(4) For the purposes of this regulation, in determining the number of hours for which a person is engaged in work, that number shall include any time allowed to

(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(1) to (3) is applied by section 83(1) of the Social Security Act 1986.
 (c) See section 10(1) of the Social Security Act 1980 (c.30); section 10 was amended by paragraph 98 of Schedule 10 to the Social Security Act 1986.
 (d) S.I. 1990/320.
 (e) S.I. 1987/1973; relevant amending instruments are S.I. 1988/660, 999, 1438 and 1970.

that person by his employer for a meal or for refreshment, but only where that person is, or expects to be, paid earnings in respect of that time.”.

Amendment of regulation 5 of the General Regulations

3. In regulation 5 of the General Regulations (engagement in remunerative work and normal engagement)–

(a) in paragraph (1), at the beginning there shall be substituted for the words “Subject to paragraph (3)” the words “Subject to paragraphs (3) and (4),”;

(b) for paragraph (2) there shall be substituted the following paragraph–

“(2) Subject to paragraph (3), a person shall be treated, for the purposes of section 20(5)(b) of the Act, as normally engaged in remunerative work if–

(a) the remunerative work in which he is engaged in the period specified in paragraph (1)(a) or (b) is work in which he is normally engaged; and

(b) he is likely to be engaged in that work over a period commencing in the week in which the date of claim falls and being a period of 5 weeks or more.”;

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

“(4) In determining the number of hours for which a person carries out activities in the course of his work, that number shall include any time allowed to that person by his employer for a meal or for refreshment, but only where that person is, or expects to be, paid earnings in respect of that time.”.

Amendment of regulation 6 of the General Regulations

4. In regulation 6 of the General Regulations (persons of a prescribed description), for paragraph (2) there shall be substituted the following paragraph–

“(2) Paragraph (1) shall not apply to a person–

(a) who is entitled to income support or would, but for section 20(9) of the Act (provision against dual entitlement of members of family), be so entitled;

(b) who is receiving advanced education within the meaning of regulation 1(2) of the Child Benefit (General) Regulations 1976(a); or

(c) who has ceased to receive full-time education but is to continue to be treated as a child by virtue of regulation 7 of the Child Benefit (General) Regulations 1976.”.

Amendment of regulation 14 of the General Regulations

5. In regulation 14 of the General Regulations (normal weekly earnings of employed earners)–

(a) in paragraph (1)–

(i) after the words “Subject to” there shall be inserted the words “paragraph (1A) and”;

(ii) for sub-paragraph (a) there shall be substituted the following sub-paragraphs–

“(a) if he is paid weekly–

(i) except where head (ii) applies, over a period of 5 consecutive weeks in the period of 6 weeks immediately preceding the week in which the date of claims falls; or

(ii) if, at the date of claim, there is a trade dispute or a period of short-time working at his place of employment, over a period immediately preceding the date of the start of that dispute or period of short-time working and being a period of 5 weeks;

(aa) if he is paid monthly–

(a) S.I. 1976/965; relevant amending instruments are S.I. 1980/1045, 1982/470 and 1987/357.

- (i) except where head (ii) applies, over a period of 2 months immediately preceding the week in which the date of claim falls; or
- (ii) if, at the date of claim, there is a trade dispute or a period of short-time working at his place of employment, over a period immediately preceding the date of the start of that dispute or period of short-time working, and being a period of 2 months; or”;
- (iii) in sub-paragraph (b), for the reference to “sub-paragraph (a)(i) or (ii)” there shall be substituted a reference to “sub-paragraph (a) or (aa)”;
- (b) after paragraph (1) there shall be inserted the following paragraph—

“(1A) Where a claimant’s earnings include a bonus or commission which is paid within 52 weeks preceding the week in which the date of claim falls, and the bonus or commission is paid separately or relates to a period longer than the period relating to the other earnings with which it is paid, his normal weekly earnings shall be treated as including an amount calculated in accordance with regulation 20A (calculation of bonus or commission).”;
- (c) for paragraph (2) there shall be substituted the following paragraphs—

“(2) Where—

 - (a) the claimant—
 - (i) has been in his employment, or
 - (ii) after a continuous period of interruption exceeding 13 weeks, has resumed his employment, or
 - (iii) has changed the number of hours for which he is contracted to work, and
 - (b) the period of his employment or the period since he resumed his employment or the period since the change in the number of hours took place, as the case may be, is less than the period specified in paragraph (1)(a) or (aa),

his normal weekly earnings shall be determined, if he has received any earnings for the period that he has been in that employment or for the period after his resumption or for the period after his change in hours, and those earnings are likely to represent his weekly earnings from that employment, by reference to those earnings and in any other case, in accordance with paragraph (2A).

(2A) In a case to which this paragraph applies, the Secretary of State shall require the claimant’s employer to furnish an estimate of the claimant’s likely earnings over a period of—

 - (a) 5 weeks, if he is paid weekly; or
 - (b) 2 months, if he is paid monthly; or
 - (c) whether or not sub-paragraph (a) or (b) applies, such other period as may, in any particular case, enable his normal weekly earnings to be determined more accurately,

and the claimant’s normal weekly earnings shall be determined by reference to that estimate.”.

Amendment of regulation 17 of the General Regulations

6. In regulation 17 of the General Regulations (periods to be disregarded) for paragraph (a) there shall be substituted the following paragraph—

- “ (a) for the purposes of regulation 14(1) (normal weekly earnings of employed earners), in the case of an employed earner—
- (i) any period in the assessment period where the earnings of the claimant are irregular or unusual;
 - (ii) any period in the assessment period in which a bonus or commission to which regulation 14(1A) applies is paid where that bonus or commission is in respect of a period longer than the period relating to the other earnings with which it is paid;”.

Amendment of regulation 20 of the General Regulations

7. In regulation 20 of the General Regulations (calculation of net earnings of employed earners), in paragraph (4) for the reference to "paragraph (2)(b)" there shall be substituted the reference to "paragraph (2A)".

Insertion of regulation 20A of the General Regulations

8. After regulation 20 of the General Regulations there shall be inserted the following regulation—

"Calculation of bonus or commission

20A. Where a claimant's earnings include a bonus or commission to which paragraph (1A) of regulation 14 (normal weekly earnings of employed earners) applies that part of his earnings shall be calculated by aggregating any payments of bonus or commission and dividing that sum by 52, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to that part of the earnings the basic rate of tax in the year of assessment in which the claim is made; and
- (b) an amount in respect of primary Class 1 contributions under the Social Security Act equivalent to an amount calculated by applying to that part of the earnings the appropriate primary percentage applicable at the date of claim; and
- (c) one-half of any sum payable by the claimant in respect of that part of the earnings by way of a contribution towards an occupational pension scheme."

Amendment of regulation 21 of the General Regulations

9. In regulation 21 of the General Regulations (earnings of self-employed earners), in paragraph (2), the following words shall be added at the end—

"other than under paragraph 40 of that Schedule."

Amendment of regulation 24 of the General Regulations

10. In regulation 24 of the General Regulations (calculation of income other than earnings), paragraph (3) shall be omitted.

Amendment of regulations 26 and 34 of the General Regulations

11. In regulations 26 and 34 of the General Regulations (notional income and capital), in paragraph (3)(a) in each of those regulations after the words "household fuel" there shall be inserted the words ", community charge".

Amendment of regulation 37 of the General Regulations

12. In regulation 37 of the General Regulations (interpretation) in the definition of "a course of advanced education" in paragraph (b) after the words "Business and Technician Education Council or" there shall be inserted the words "a national certificate of".

Amendment of regulation 41 of the General Regulations

13. In regulation 41 of the General Regulations (relationship with amounts to be disregarded under Schedule 2)—

- (a) for the words "other income shall be disregarded" to "to the extent that," there shall be substituted the words "other income to which sub-paragraph (1) of that paragraph applies shall be disregarded thereunder only to the extent that";
- (b) for the amount "£5" there shall be substituted the amount "£10".

Amendment of Schedule 2 to the General Regulations

14. In Schedule 2 to the General Regulations (sums to be disregarded in the calculation of income other than earnings)—

- (a) for paragraph 13 there shall be substituted the following paragraph—

“13.—(1) Except where sub-paragraph (2) applies and subject to sub-paragraph (3) and paragraphs 29 and 34, £10 of any charitable payment or of any voluntary payment made or due to be made at regular intervals.

(2) Subject to sub-paragraph (3) and paragraph 34, any charitable payment or voluntary payment made or due to be made at regular intervals which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, community charge, or housing costs of a claimant or any member of his family.

(3) Sub-paragraphs (1) and (2) shall not apply to a payment which is made by a person for the maintenance of any member of his family or of his former partner or of his children.

(4) For the purposes of sub-paragraph (1) where a number of charitable or voluntary payments fall to be taken into account they shall be treated as though they were one such payment.

(5) For the purposes of sub-paragraph (2) 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.

(b) in paragraph 14, for the amount “£5” there shall be substituted the amount “£10”;

(c) in paragraph 18, the words “paragraph 19” to the end shall be omitted and there shall be substituted the words “paragraph 19 or 40 or regulation 21(2) (earnings of self-employed earners) applies.”;

(d) in paragraph 29—

(i) for the reference “13” there shall be substituted a reference to “13(1)”;

(ii) for the amount “£5” there shall be substituted the amount “£10”;

(e) after paragraph 39(a) there shall be inserted the following paragraph—

“40. Where the claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation—

(a) £20.00 of any payment for that accommodation made by the person to whom it is provided; and

(b) where any such payment exceeds £20.00, 50% of the excess.”;

(f) after paragraph 40 there shall be inserted the following paragraphs—

“41. Any community charge benefit.

42. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988(b) or section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987(c) (reduction of liability for personal community charge).

43. Any special war widows payment made under—

(a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865(d);

(b) the Royal Warrant dated 19th February 1990 amending the Schedule to the Army Pensions Warrant 1977(e);

(c) the Queen’s Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917(f);

(d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980(g);

(a) See S.I. 1988/1438, regulation 8(c) and S.I. 1988/1970, regulation 11(b).

(b) 1988 c.41.

(c) 1987 c.47.

(d) 1865 c. 73. Copies of the Order are available from Ministry of Defence, NPC2, Rm 317, Archway Block South, Old Admiralty Building, Spring Gardens, London SW1A 2BE.

(e) Army Code no 13045 published by HMSO.

(f) 1917 c.51. Queen’s Regulations for the Royal Air Force are available from HMSO.

(g) 1980 c.9. Copies of the Order are available from Ministry of Defence at the address given in footnote (d).

(e) the Orders dated 19th February 1990 amending Orders made on 12th December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980(a); and any analogous payment by the Secretary of State for Defence to any person who is not a person entitled under the provisions mentioned in sub-paragraphs (a) to (e) of this paragraph.”

Amendment of Schedule 3 to the General Regulations

15. In Schedule 3 to the General Regulations (capital to be disregarded)–

(a) after paragraph 37(b) there shall be inserted the following paragraph–

“38. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988 or section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987 (reduction of liability for personal community charge) but only for a period of 52 weeks from the date of receipt of the payment.”;

(b) after paragraph 38 there shall be inserted the following paragraph–

“39. Any grant made to the claimant in accordance with a scheme made under section 129 of the Housing Act 1988(c) or section 66 of the Housing (Scotland) Act 1988(d) (schemes for payments to assist local housing authority and local authority tenants to obtain other accommodation) which is to be used–

(a) to purchase premises intended for occupation as his home; or

(b) to carry out repairs or alterations which are required to render premises fit for occupation as his home,

for a period of 26 weeks from the date on which he received such a grant or such longer period as is reasonable in the circumstances to enable the purchase, repairs or alterations to be completed and the claimant to commence occupation of those premises as his home.”.

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

12th March 1990

Nicholas Scott
Minister of State,
Department of Social Security.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Family Credit (General) Regulations 1987 in the following respects–

(a) they provide that a person is to be treated as engaged in work or carrying out activities during meal or refreshment breaks for which he is, or expects to be, paid (regulations 2 and 3(c)); and for a person to be treated as normally engaged in remunerative work if that work will last 5 weeks or more from the date of claim (regulation 3(b));

(b) they exclude from the category of persons of a prescribed description persons

(a) Army Code no 60589 published by HMSO.

(b) See S.I. 1988/1970, regulation 12(c).

(c) 1988 c.50.

(d) 1988 c.43.

receiving advanced education and any person who has ceased full-time education but is still treated as a child for the purposes of child benefit (regulation 4) and amend the definition of a course of advanced education (regulation 12);

- (c) they provide for normal weekly earnings of an employed earner to be assessed over 5 consecutive weeks in the 6 weeks immediately preceding the week of claim and for bonus and commission payments to be calculated separately before inclusion as part of normal weekly earnings; make provision for determining a person's normal weekly earnings where he has recently changed the number of hours worked and make certain other minor amendments (regulations 5 and 7);
- (d) they provide for certain periods in which a bonus or commission is paid to be disregarded in determining the assessment period (regulation 6) and for calculating the amount of any bonus or commission where separate calculation is appropriate (regulation 8);
- (e) they amend the provision for determining whether income derived from the provision of board and lodging accommodation is to be calculated as earnings and, where it is not earnings, provide for a disregard of £20.00 and 50 per cent of any excess (regulations 9, 10 and 14(e)); and treat third party payments in respect of the community charge as notional income and capital (regulation 11);
- (f) they increase from £5 to £10 the disregard in respect of charitable or voluntary payments, a student's income and war pensions; and provide for certain payments made to war widows, community charge benefit, payments consequent on a reduction in the personal community charge, and grants made to assist local authority tenants to purchase or repair their home to be disregarded (regulations 13, 14(a) to (d) and (f) and 15).