
STATUTORY INSTRUMENTS

1992 No. 2977

**The National Assistance (Assessment
of Resources) Regulations 1992**

**PART I
GENERAL**

Citation and Commencement

1. These Regulations may be cited as the National Assistance (Assessment of Resources) Regulations 1992 and shall come into force on 1st April 1993.

Interpretation

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

“the Act” means the National Assistance Act 1948;

“attendance allowance” has the same meaning as in the Income Support Regulations;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992⁽¹⁾;

“council tax” shall be construed in accordance with section 1(1) of the Local Government Finance Act 1992⁽²⁾;

“council tax benefit” means council tax benefit under the Contributions and Benefits Act⁽³⁾;

“couple” has the same meaning as in the Income Support Regulations;

“disability living allowance” means a disability living allowance under the Contributions and Benefits Act⁽⁴⁾;

“disability working allowance” means a disability working allowance under the Contributions and Benefits Act⁽⁵⁾;

“dwelling” has the meaning prescribed in section 137(1) of the Contributions and Benefits Act;

“employed earner” shall be construed in accordance with section 2(1)(a) of the Contributions and Benefits Act;

“the Fund” has the same meaning as in the Income Support Regulations⁽⁶⁾;

“income support” means income support under the Contributions and Benefits Act⁽⁷⁾;

(1) 1992 c. 4.

(2) 1992 c. 14.

(3) See sections 131 to 133 of that Act, as amended by section 103 of and paragraphs 4 to 6 of Schedule 9 to the Local Government Finance Act 1992.

(4) See sections 71 to 76 of that Act.

(5) See section 129 of that Act.

(6) As amended by regulation 6(2)(b) of S.I.1992/1101.

(7) See sections 124 to 127 of that Act.

“the Income Support Regulations” means the Income Support (General) Regulations 1987⁽⁸⁾;
 “the Independent Living Fund” has the same meaning as in the Income Support Regulations⁽⁹⁾;
 “invalidity pension” means an invalidity pension under the Contributions and Benefits Act⁽¹⁰⁾;
 “less dependent resident” means a resident—

- (a) in premises which are neither owned nor managed by a local authority⁽¹¹⁾ and which are not registered (as respects England and Wales) under the Registered Homes Act 1984⁽¹²⁾ or (as respects Scotland) under Part IV of the Social Work (Scotland) Act 1968⁽¹³⁾; or
- (b) in premises which are either owned or managed or owned and managed by a local authority but at which residents are not provided with board,

and in this context “board” means at least some cooked or prepared meals which are both cooked or prepared, by a person other than the resident or a member of his family, and consumed at those premises or in associated premises, if the cost of those meals is accounted for as part of the standard rate for the accommodation at those premises;

“liable relative” means a spouse or former spouse of a resident;

“the Macfarlane (Special Payments) Trust”, “the Macfarlane (Special Payments) (No.2) Trust” and “the Macfarlane Trust” have the same meaning as in the Income Support Regulations⁽¹⁴⁾;

“mobility supplement” has the same meaning as in the Income Support Regulations;

“partner” has the same meaning as in the Income Support Regulations;

“resident” means a person provided with accommodation under Part III of the Act⁽¹⁵⁾;

“self-employed earner” shall be construed in accordance with section 2(1)(b) of the Contributions and Benefits Act;

“severe disablement allowance” means a severe disablement allowance under the Contributions and Benefits Act⁽¹⁶⁾;

“sickness benefit” means sickness benefit under the Contributions and Benefits Act⁽¹⁷⁾;

“standard rate” means a standard rate fixed in accordance with section 22(2) of the Act⁽¹⁸⁾;

“student” has the meaning prescribed in regulation 61 of the Income Support Regulations⁽¹⁹⁾ (interpretation);

“temporary resident” means a resident whose stay is—

- (a) unlikely to exceed 52 weeks, or
- (b) in exceptional circumstances, unlikely substantially to exceed that period.

(2) Where reference is made in these Regulations to the application of a provision in the Income Support Regulations, any reference to “claimant” in the provision of the Income Support Regulations so applied shall be construed as a reference to a resident.

⁽⁸⁾ S.I. 1987/1967, as amended.

⁽⁹⁾ As amended by regulation 4 of S.I. 1988/999.

⁽¹⁰⁾ See section 33 of that Act.

⁽¹¹⁾ See section 33(1) of the Act, as amended by section 195(6) of, and paragraph 2(6) of Schedule 23 to, the Local Government Act 1972 (c. 70), section 214 of, and paragraph 89 of Schedule 27 to, the Local Government (Scotland) Act 1973 (c. 65), and section 11(5) of and Schedule 2 to the Residential Homes Act 1980 (c. 7).

⁽¹²⁾ 1984 c. 23.

⁽¹³⁾ 1968 c. 49.

⁽¹⁴⁾ As amended by regulation 2(1) of S.I. 1988/663, regulation 3(2) of S.I. 1991/127 and regulation 5(2) of S.I. 1991/1175.

⁽¹⁵⁾ As respects Scotland, see section 65(f) of the Act, as amended by paragraph 5(9) of Schedule 9 to the National Health Service and Community Care Act 1990, and section 87(3) of the Social Work (Scotland) Act 1968.

⁽¹⁶⁾ See sections 68 and 69 of that Act.

⁽¹⁷⁾ See sections 31 and 32 of that Act.

⁽¹⁸⁾ As respects England and Wales, see also section 26(3) of the Act; as respects Scotland, see also section 87(4) of the Social Work (Scotland) Act 1968.

⁽¹⁹⁾ As amended by regulation 10(c) of S.I. 1991/1559, and regulation 5(1) of S.I. 1992/468.

- (3) 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 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.

Assessing a resident's ability to pay

3. For the purposes of section 22(3) of the Act⁽²⁰⁾ the regulations to which a local authority shall give effect in assessing a resident's ability to pay are those set out in these Regulations.

Rounding of fractions

4. Where any calculation under these Regulations of a resident's ability to pay results in a fraction of a penny, that fraction shall, if it would be to the resident's advantage, be treated as a penny, otherwise it shall be disregarded.

Payment by less dependent residents

5. In assessing a less dependent resident's ability to pay for his accommodation, a local authority need not apply Parts II to V of these Regulations (treatment of income, treatment of capital, liable relatives and students) if they consider it reasonable in the circumstances not to do so.

Liable relatives

6. Regulations 10 to 19 (income, except calculation of income), 21 to 27 (capital, except capital limit and tariff income) and Part V (students) shall not apply to any payment which is to be calculated in accordance with Part IV (liable relatives).

Students

7. The provisions of Parts II and III (income and capital) shall have effect in relation to students subject to the modifications set out in Part V (students).

Transitional provisions

8. The transitional provisions set out in Schedule 1 shall have effect.

PART II

TREATMENT OF INCOME

Calculation of income

- 9.—(1) A resident's income shall be calculated on a weekly basis—
- (a) by determining in accordance with this Part the weekly amount of his income; and

⁽²⁰⁾ Amended by section 31(1) of, and paragraph 3 of Schedule 7 to, the Supplementary Benefits Act 1976, and section 86 of, and paragraph 32 of Schedule 10 to, the Social Security Act 1986. *See also* section 87(3) of the Social Work (Scotland) Act 1968.

(b) by adding to that amount his weekly tariff income from capital calculated in accordance with regulation 28 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1), “income” includes capital treated as income and notional income under regulations 16 and 17.

Earnings of self-employed earners

10. A resident’s gross earnings derived from employment as a self-employed earner shall be assessed in accordance with the definition of “earnings” in regulation 37 of the Income Support Regulations⁽²¹⁾ (earnings of self-employed earners).

Calculation of net profit of self-employed earners

11.—(1) For the purposes of regulation 12, the earnings of a resident derived from employment as a self-employed earner to be taken into account shall, subject to paragraph (3), be his net profit from that employment.

(2) For the purposes of paragraph (1), a resident’s net profit shall be calculated by taking into account his gross earnings from his employment as a self-employed earner less any relevant outgoings, liabilities or expenses.

(3) There shall be disregarded from the calculation of a resident’s net profit any sum, where applicable, specified in Schedule 2.

Weekly amount of net profit of self-employed earners

12.—(1) Subject to paragraphs (2) and (3), the weekly amount of a resident’s income from employment as a self-employed earner shall be determined by reference to his average weekly net profit from that employment—

(a) over a period of 52 weeks; or

(b) where the resident has recently become engaged in that employment or where there has been a change which is likely to affect the normal pattern of business, over such other period of weeks as may, in any particular case, enable the weekly amount of his earnings to be determined more accurately.

(2) Subject to paragraph (3), where a resident’s earnings consist of or include royalties or sums paid periodically for or in respect of any copyright, those earnings (“the royalties etc.”) shall be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of the royalties etc.—

(a) unless sub-paragraph (b) applies, by the difference between the standard rate for the accommodation provided for that resident and the lower rate for that accommodation which he would be liable to pay if he did not have the royalties etc.;

(b) where a resident would be assessed as liable to make no contribution towards the cost of his accommodation if he did not have the royalties etc., by the standard rate for his accommodation.

(3) Where a resident’s earnings consist of or include royalties or sums paid periodically for or in respect of any copyright and immediately before the date of one such payment he is in receipt of income support, that payment (“the royalty payment”) shall be taken into account over such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of the royalty payment by—

(21) Amended by regulation 12 of S.I. [1989/1323](#), and article 2 of and the Schedule to S.I. [1991/387](#).

- (a) unless sub-paragraph (b) applies, the weekly amount of income support which would have been paid to him, had the royalty payment not been made; or
- (b) in circumstances where the royalty payment has disqualified the resident from receiving income support, the weekly amount referred to in sub-paragraph (a) added to the weekly amount of any part of the royalty payment which would have fallen to be disregarded in the calculation of his income support (as is appropriate to his case).

Earnings of employed earners

13. A resident's gross earnings derived from employment as an employed earner shall be assessed in accordance with the definition of "earnings" in regulation 28 of the Housing Benefit (General) Regulations (earnings of employed earners)(**22**).

Calculation of net earnings of employed earners

14.—(1) For the purposes of regulation 18, the earnings of a resident derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings calculated in accordance with the method prescribed in regulation 36(3) of the Income Support Regulations (calculation of net earnings of employed earners).

(2) There shall be disregarded from the calculation of a resident's net earnings under paragraph (1) any sum, where applicable, specified in Schedule 2.

Calculation of income other than earnings

15.—(1) For the purposes of regulation 18, the income of a resident which does not consist of earnings to be taken into account shall, subject to paragraphs (2) and (3), be his gross income and any capital treated as income under regulations 16 and 17 (capital treated as income and notional income).

(2) There shall be disregarded from the calculation of a resident's gross income under paragraph (1) any sum, where applicable, specified in Part I of Schedule 3, in accordance with Part II of that Schedule.

(3) Where the payment of any benefit under the Contributions and Benefits Act 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 before that deduction is made.

Capital treated as income

16.—(1) Any capital payable to the resident by instalments which—

- (a) are outstanding on the first day from which a resident becomes liable to pay for his accommodation; or
- (b) where a local authority limits the payments required from a resident for his accommodation pursuant to section 22(5A) of the Act, are outstanding on the first day on which the local authority ceases to limit the payments required from the resident pursuant to section 22(5A) of the Act,

shall, if the aggregate of the instalments outstanding and the amount of the resident's capital otherwise calculated in accordance with Part III of these Regulations exceeds the amount specified in regulation 41(1) of the Income Support Regulations(**23**) (capital treated as income), be treated as income.

(22) S.I. 1987/1971.

(23) Amended by regulation 5(2) of S.I. 1990/671. The amount specified is currently £8,000.

- (2) Any payment received under an annuity shall be treated as income.
- (3) Any earnings to the extent that they are not a payment of income shall be treated as income.

Notional income

17.—(1) A resident shall be treated as possessing income of which he has deprived himself for the purpose of decreasing the amount that he may be liable to pay for his accommodation.

(2) Subject to paragraph (3), a resident shall be treated as possessing any income which would be treated as income possessed by a claimant of income support under paragraphs (2) to (4) of regulation 42 of the Income Support Regulations⁽²⁴⁾ (notional income).

(3) For the purposes of paragraph (2), regulation 42(4) of the Income Support Regulations shall apply as if—

- (a) for the words in sub-paragraph (a)(ii) from “the food, ordinary” to the end of head (ii) there were substituted the words “any item which was taken into account when the standard rate was fixed for the accommodation provided”; and
- (b) the words from “except where sub-paragraph (a)(i) applies” to “the Act (trade disputes) applies” were deleted.

(4) A resident shall be treated as possessing any income paid or due to be paid to a local authority by a third party pursuant to an agreement between the local authority and the third party made in connection with the liability of the resident to pay the local authority for his accommodation.

Calculation of income derived from employed earners' employment and income other than earnings

18.—(1) A resident's net earnings derived from employment as an employed earner and income which does not consist of earnings shall be taken into account as income—

- (a) in a case where it is payable in respect of a period, over a period equal to the length of that period and at a weekly amount determined in accordance with regulation 19; or
- (b) in any other case except where paragraph (2) applies, over a period of such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of that income—
 - (i) unless head (ii) applies, by the difference between the standard rate for the accommodation provided for that resident and the lower rate for that accommodation which he would be liable to pay if he did not possess that income;
 - (ii) where a resident would be assessed as liable to make no contribution towards the cost of his accommodation if he did not possess that income, by the standard rate for his accommodation.

(2) In a case where a resident's earnings as an employed earner or income other than earnings are not payable in respect of a period and immediately before a payment of such income (“the income payment”) is made the resident is in receipt of income support, the income payment shall be taken into account over such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of the income payment by—

- (a) unless sub-paragraph (b) applies, the weekly amount of income support which would have been paid to him, had the income payment not been made; or

⁽²⁴⁾ Amended by regulation 19(a) of S.I. 1988/663; regulation 10(a) of, and paragraph 4 of Schedule 1 to, S.I. 1988/1445; paragraph 7 of Schedule 1 to S.I. 1989/534; regulation 3(3)(a) of S.I. 1990/127; regulation 5(3) of S.I. 1991/1175; regulation 8 of S.I. 1991/1559; regulation 4 of S.I. 1992/468; regulation 6(3) of S.I. 1992/1101; and regulation 2 of S.I. 1992/1198.

- (b) in circumstances where the income payment has disqualified the resident from receiving income support, the weekly amount referred to in sub-paragraph (a) added to the weekly amount of any part of the income payment which would have fallen to be disregarded in the calculation of his income support (as is appropriate to his case).

Weekly amount of income derived from employed earners' income and income other than earnings

19. For the purposes of regulation 18(1)(a) , where the period in respect of which 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) where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) where that period is three months, by dividing the amount of the payment by 13;
 - (iii) where that period is a year by dividing the amount of the payment by 52;
 - (iv) in any other case by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

PART III

TREATMENT OF CAPITAL

Capital limit

20. No resident shall be assessed as unable to pay for his accommodation at the standard rate if his capital calculated in accordance with regulation 21 exceeds the amount prescribed for the purposes of section 134(1) of the Contributions and Benefits Act(**25**) (exclusions from benefit).

Calculation of capital

21.—(1) The capital of a resident 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 regulation 22.

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

Income treated as capital

22.—(1) Any bounty which would be treated as capital under paragraph (1) of regulation 48 of the Income Support Regulations(**26**) (income treated as capital) 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 13 (earnings of employed earners) shall be treated as capital.

(25) See regulation 45 of the Income Support Regulations, as amended by regulation 5(2) of S.I. 1990/671. The amount prescribed is currently £8,000.

(26) Amended by regulation 11(a) of S.I. 1988/1445.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 5, 10 or 16 of Schedule 4, any income of a resident which is derived from capital shall be treated as capital but only from the date on which it is normally due to be paid to him.

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

(6) Any payment which would be treated as capital under paragraph (8) of regulation 48 of the Income Support Regulations⁽²⁷⁾ (income treated as capital) shall be treated as capital.

(7) Any charitable or voluntary payment which is not made or not due to be made at regular intervals, other than one which is made under the Fund, the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust or the Independent Living Fund, shall be treated as capital.

Calculation of capital in the United Kingdom

23.—(1) Except in a case to which paragraph (2) applies and subject to regulation 27(2), capital which a resident possesses in the United Kingdom shall be calculated at its current market or surrender value (whichever is higher), less—

- (a) where there would be expenses attributable to sale, 10 per cent; and
- (b) the amount of any incumbrance secured on it.

(2) Capital in the form of a National Savings Certificate—

- (a) if it was purchased from an issue the sale of which ceased before the 1st July immediately preceding the date on which the resident's accommodation was provided, shall be calculated at the price which it would have realised on that 1st July had it been purchased on the last day of that issue;
- (b) in any other case, shall be calculated at its purchase price.

Calculation of capital outside the United Kingdom

24. Capital which a resident possesses in a country outside the United Kingdom shall be calculated in accordance with the method prescribed in regulation 50 of the Income Support Regulations (calculation of capital outside the United Kingdom).

Notional capital

25.—(1) A resident may be treated as possessing actual capital of which he has deprived himself for the purpose of decreasing the amount that he may be liable to pay for his accommodation except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the resident; or
- (b) to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 26.

(2) Subject to paragraph (3), a resident may be treated as possessing any payment of capital which would be treated as capital possessed by a claimant of income support under paragraph (2) or (3) of regulation 51 of the Income Support Regulations⁽²⁸⁾ (notional capital).

(3) For the purposes of paragraph (2)—

⁽²⁷⁾ As respects England and Wales, paragraph (8) was substituted by paragraph 5 of the Schedule to S.I. 1992/468.

⁽²⁸⁾ Amended by regulation 22(a) of S.I. 1988/663; regulation 12(a) of, and paragraph 4 of Schedule 1 to, S.I. 1988/1445; paragraph 7 of Schedule 1 to S.I. 1989/534; regulation 3(3)(c) of S.I. 1990/127; regulation 5(5) of S.I. 1991/1175; regulation 9 of S.I. 1991/1559; and regulation 6(5) of S.I. 1992/1101.

- (a) regulation 51(2) of the Income Support Regulations shall apply as if for the reference to Schedule 10 to those Regulations there were substituted a reference to Schedule 4 to these Regulations; and
- (b) regulation 51(3)(a)(ii) of the Income Support Regulations shall apply as if for the words from “the food, ordinary” to the end of sub-paragraph (a)(ii) there were substituted the words “any item which was taken into account when the standard rate was fixed for the accommodation provided”.

(4) A resident shall be treated as possessing any payment of capital made or due to be made to a local authority by a third party pursuant to an agreement between the local authority and the third party made in connection with the liability of the resident to pay the local authority for his accommodation.

(5) Where a resident is treated as possessing capital under any of paragraphs (1), (2) or (4), the foregoing provisions of this Part shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

Diminishing notional capital rule

26.—(1) Where a resident is treated as possessing capital under regulation 25(1) (for the purposes of this regulation called “reducible notional capital”), for each week or part of a week that a local authority has determined that the resident shall be liable to pay for his accommodation at a higher rate than that at which he would have been assessed as liable to pay if he had no reducible notional capital, the amount of his reducible notional capital shall be reduced by the method prescribed in paragraph (2).

(2) The local authority shall reduce the amount of the resident’s reducible notional capital by the difference between—

- (a) the higher rate referred to in paragraph (1); and
- (b) the rate which he would have been assessed as liable to pay for his accommodation for that week or part of a week if he had been assessed as possessing no reducible notional capital.

Capital jointly held

27.—(1) Where a resident and one or more other persons are beneficially entitled in possession to any capital asset except any interest in land—

- (a) they shall be treated as if each of them were entitled in possession to an equal share of the whole beneficial interest in that asset; and
- (b) that asset shall be treated as if it were actual capital.

(2) Where a resident and one or more other persons are beneficially entitled in possession to any interest in land—

- (a) the resident’s share shall be valued at an amount equal to the price which his interest in possession would realise if it were sold to a willing buyer, less than 10 per cent and the amount of any incumbrance secured solely on his share of the whole beneficial interest; and
- (b) the value of his interest so calculated shall be treated as if it were actual capital.

Calculation of tariff income from capital

28. A resident’s tariff income from capital shall be calculated in accordance with the method prescribed in regulation 53 of the Income Support Regulations(29) (calculation of tariff income

(29) Amended by regulation 13 of S.I. 1988/2022 and regulation 5(2) of S.I. 1990/671.

from capital), except that for the purposes of this regulation the references in regulation 53(3) of the Income Support Regulations to regulations 48 and 60 of the Income Support Regulations (income treated as capital and liable relative payments treated as capital) shall be construed as references to regulations 22 and 34 of these Regulations (income treated as capital and liable relative payments treated as capital) respectively.

PART IV

LIABLE RELATIVES

Interpretation

29. In this Part, unless the context otherwise requires—

“payment” has the meaning prescribed in regulation 54 of the Income Support Regulations(**30**) (interpretation), but as though sub-paragraph (h) of the definition in that regulation were omitted and as though the reference in it to a “liable relative” were to a liable relative as defined in regulation 2(1) of these Regulations;

“periodical payment” means—

- (a) a payment which is made or due to be made to a resident at regular intervals in pursuance of a court order or agreement for maintenance;
- (b) in a case where a liable relative has established a pattern of making payments to a resident at regular intervals, any such payment;
- (c) any payment representing a commutation of payments to which sub-paragraph (a) or (b) of this definition applies whether made in arrears or advance,

but does not include a payment due to be made before the resident was provided with his accommodation.

Treatment of liable relative payments

30. Except where regulation 34(1) applies, a payment made to a resident by a liable relative shall be—

- (a) treated as income; and
- (b) taken into account in accordance with the following provisions of this Part.

Period over which periodical payments are to be taken into account

31. The period over which a periodical payment is to be taken into account shall be calculated in accordance with the method prescribed in paragraph (1) but not paragraph (2) of regulation 56 of the Income Support Regulations (period over which periodical payments are to be taken into account).

Period over which payments other than periodical payments are to be taken into account

32.—(1) Subject to the other provisions of this regulation and of regulation 34, the number of weeks over which a payment other than a periodical payment shall be taken into account shall be equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing that payment by the difference between—

- (a) the standard rate for the resident’s accommodation; and

(b) the lower rate for that accommodation which he would have been liable to pay if he had not received that payment.

(2) Subject to paragraph (4), where—

- (a) a liable relative makes a periodical payment and any other payment concurrently; and
- (b) the weekly amount of the periodical payment, as calculated in accordance with regulation 33, is less than the divisor referred to in paragraph (1),

the number of weeks over which the payment other than the periodical payment shall be taken into account shall be equal to the apposite number of weeks calculated by the method prescribed in paragraph (3).

(3) The apposite number of weeks referred to in paragraph (2) shall be the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of the other payment by the difference between—

- (a) the standard rate for the resident’s accommodation; and
- (b) the lower rate for that accommodation which he would be liable to pay if he had not received the other payment (but had received the periodical payment).

(4) Subject to regulation 34, where—

- (a) a resident receives a payment other than a periodical payment; and
- (b) immediately before the date on which that payment is made he is in receipt of income support,

the number of weeks over which the payment other than a periodical payment (“the non-periodical payment”) shall be taken into account (whether or not the resident is in receipt of any periodical payments) shall be equal to the apposite number of weeks calculated by the method prescribed in paragraph (5).

(5) The apposite number of weeks referred to in paragraph (4) shall be equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of the non-periodical payment by—

- (a) unless sub-paragraph (b) applies, the weekly amount of income support which would have been paid to him, had the non-periodical payment not been made; or
- (b) in circumstances where the non-periodical payment has disqualified the resident from receiving income support, the weekly amount referred to in sub-paragraph (a) added to the weekly amount of any part of the non-periodical payment which would have fallen to be disregarded in the calculation of his income support (as is appropriate to his case).

Calculation of the weekly amount of a liable relative payment

33.—(1) Subject to paragraph (2), the weekly amount of a payment made by a liable relative shall be calculated by the method prescribed in regulation 58 of the Income Support Regulations (calculation of the weekly amount of a liable relative payment).

(2) For the purposes of paragraph (1), the reference in regulation 58(5) of the Income Support Regulations to regulation 57 of the Income Support Regulations (period over which payments other than periodical payments are to be taken into account) shall be construed as a reference to regulation 32 of these Regulations.

Liable relative payments to be treated as capital

34.—(1) Subject to paragraph (2), where—

- (a) a liable relative makes a periodical payment and any other payment concurrently; and

- (b) the weekly amount of the periodical payment as calculated in accordance with regulation 33 is equal to or greater than the amount of the divisor calculated by the method prescribed in regulation 32(1),

the other payment shall be treated as capital.

(2) If, in any case, the liable relative ceases to make periodical payments, the other payment to which paragraph (1) applies shall be taken into account as a payment other than a periodical payment, in accordance with regulation 32(1) or (4) (as is appropriate to his case).

PART V

STUDENTS

Interpretation

35. In this Part, unless the context otherwise requires—

“access income” means a payment derived from funds made available by the Secretary of State for the purpose of assisting students in financial difficulties under section 100 of the Education Act 1944⁽³¹⁾, sections 131 and 132 of the Education Reform Act 1988⁽³²⁾ or section 73 of the Education (Scotland) Act 1980⁽³³⁾;

“contribution”, “covenant income” and “education authority” have the meanings prescribed in regulation 61 of the Income Support Regulations⁽³⁴⁾ (interpretation);

“grant income” means any income by way of any educational grant or award including any contribution (whether paid by covenant or otherwise), except access income;

“standard maintenance grant” has the meaning prescribed in regulation 61 of the Income Support Regulations;

“student loan” means a loan which is made to a student pursuant to arrangements made under one of the provisions specified in regulation 66A(1) of the Income Support Regulations⁽³⁵⁾ (treatment of student loans).

Calculation of grant income

36.—(1) The amount of a student’s grant income to be taken into account shall be the amount of standard maintenance grant included in his grant income and the local authority shall disregard the difference between that amount and the whole of his grant income.

(2) The amount to be taken into account shall be apportioned—

- (a) in a case where it is attributable to a period of study, equally between the weeks in that period;
- (b) in any other case, equally between the weeks of the period in respect of which it is payable.

Covenant income where there is no grant income

37.—(1) Where a student is not in receipt of any grant income, the amount of covenant income to be taken into account shall be the amount of standard maintenance grant which, had the

⁽³¹⁾ 1944 c. 31.

⁽³²⁾ 1988 c. 40.

⁽³³⁾ 1980 c. 44.

⁽³⁴⁾ As amended by regulation 14 of S.I. 1988/2022.

⁽³⁵⁾ Regulation 66A of the Income Support Regulations was inserted by regulation 5(7) of S.I. 1990/1549, and paragraph (1) was amended by regulation 9 of S.I. 1991/236.

student been in receipt of a standard maintenance grant, would have been taken into account under regulation 36(1) (calculation of grant income) and the local authority shall disregard the difference between that amount and the total amount of his covenant income.

(2) The amount to be taken into account shall be apportioned equally between the weeks of the period in respect of which it is payable.

Relationship with amounts disregarded under Schedule 3

38. No part of a student's covenant income or grant income shall be disregarded under paragraph 10 of Schedule 3 (charitable or voluntary payments).

Treatment of student loans

39. Student loans shall be treated in accordance with regulation 66A of the Income Support Regulations⁽³⁶⁾ (treatment of student loans).

Treatment of access income

40.—(1) Access income paid or due to be paid at regular intervals shall be treated as income other than earnings for the purposes of Part II (treatment of income) and as a voluntary payment for the purposes of paragraph 10 of Schedule 3 (charitable or voluntary payments).

(2) Access income not paid or due to be paid at regular intervals shall be treated as capital for the purposes of Part III (treatment of capital).

30th November 1992

Virginia Bottomley
One of Her Majesty's Principal Secretaries of
State

(36) Regulation 66A(2) of the Income Support Regulations was amended by regulation 12 of S.I. [1991/1559](#).