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## STATUTORY INSTRUMENTS

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# 1996 No. 207

## The Jobseeker's Allowance Regulations 1996

### PART VIII

#### INCOME AND CAPITAL

##### *Chapter I*

##### *General*

#### **Calculation of income and capital of members of claimant's family and of a polygamous marriage**

**88.**—(1) Subject to paragraphs (2) and (3) [<sup>F1</sup>and regulations 88ZA (calculation of income and capital of a joint-claim couple) and] 106 (modifications in respect of children and young persons), the income and capital of a claimant's partner and the income of a child or young person which by virtue of section 13(2) is to be treated as the income and capital of the claimant, 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 his partner or that child or young person.

(2) Regulations 99(2) and 101(2), so far as they relate to paragraphs 1 to 13 and 19 of Schedule 6 (earnings to be disregarded) and regulation 104(1) (capital treated as income) shall not apply to a child or young person.

(3) Where at least one member of a couple is aged less than 18 and the applicable amount of the couple falls to be determined under [<sup>F2</sup>paragraph 1(3)(b), (c), (g) or (h)] of Schedule 1 (applicable amounts), the income of the claimant's partner shall not be treated as the income of the claimant to the extent that—

- (a) in the case of a couple where both members are aged less than 18, the amount specified in paragraph 1(3)(a) of that Schedule exceeds the amount specified in paragraph 1(3)(c) of that Schedule; and
- (b) in the case of a couple where only one member is aged less than 18, the amount specified in paragraph 1(3)(e) of that Schedule exceeds the amount which applies in that case which is specified in [<sup>F3</sup>paragraph 1(3)(g) or (h)] of that Schedule.

(4) Subject to paragraph (5), where 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.

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(5) Where a member of a polygamous marriage is a partner aged less than 18 and the amount which applies in respect of him under regulation 84(2) (polygamous marriages) is nil, the claimant shall not be treated as possessing the income of that partner to the extent that an amount in respect of him would have been included in the applicable amount if he had fallen within the circumstances set out in regulation 84(2)(a) or (b).

#### Textual Amendments

- F1** Words in [reg. 88\(1\)](#) substituted (19.3.2001) by [The Jobseeker's Allowance \(Joint Claims\) Regulations 2000 \(S.I. 2000/1978\)](#), [reg. 1\(1\)](#), [Sch. 2 para. 36](#)
- F2** Words in [reg. 88\(3\)](#) substituted (7.10.1996) by [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), [reg. 1\(1\)](#), [Sch. Pt. 2](#)
- F3** Words in [reg. 88\(3\)\(b\)](#) substituted (7.10.1996) by [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), [reg. 1\(1\)](#), [Sch. Pt. 2](#)

#### [<sup>F4</sup>Calculation of income and capital of a joint-claim couple

**88ZA.**—(1) Subject to paragraphs (2) and (4), the income and capital of a joint-claim couple shall be calculated by—

- (a) determining the income and capital of each member of that couple in accordance with this Part; and
  - (b) aggregating the amount determined in respect of each member in accordance with subparagraph (a) above.
- (2) Where—
- (a) a member of a joint-claim couple is aged less than 18;
  - (b) the other member is aged over 18; and
  - (c) the applicable amount of the couple falls to be determined under paragraph 1(3)(g) or (h) of Schedule 1 (applicable amounts),

the income of the joint-claim couple shall not be aggregated to the extent that the amount specified in paragraph 1(3)(e) of that Schedule exceeds the amount which applies in that case which is specified in paragraph 1(3)(g) or (h) of that Schedule.

(3) Where a member of a joint-claim couple is married polygamously to two or more members of his household, the joint-claim couple shall be treated as possessing income and capital belonging to each such member and the income and capital of that member shall be calculated in accordance with the following provisions of this Part in like manner as for each member of the joint-claim couple.

(4) Regulations 99(2) and 101(2) in so far as they relate to paragraphs 5, 7, 8 and 11 of Schedule 6 (earnings to be disregarded) shall not apply to a member of a joint-claim couple but there shall instead be disregarded from the net earnings of a member of a joint-claim couple any sum, where applicable, specified in—

- (a) paragraphs 1 to 4 and 13 to 16 of Schedule 6; and
- (b) paragraphs 1 to 6 of Schedule 6A.]

#### Textual Amendments

- F4** [Reg. 88ZA](#) inserted (19.3.2001) by [The Jobseeker's Allowance \(Joint Claims\) Regulations 2000 \(S.I. 2000/1978\)](#), [Sch. 2 para. 37](#)

[<sup>F5</sup> **Income of participants in the self-employment route** <sup>F6</sup> ...

**88A.** Chapters II, III, IV, V, VII and VIII of this Part and regulations 131 to 136, 138 and 139 shall not apply to any income which is to be calculated in accordance with Chapter IVA of this Part (participants in the self-employment route<sup>F7</sup> ...).]

**Textual Amendments**

- F5** Reg. 88A added (1.6.1998) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 1998 \(S.I. 1998/1174\)](#), regs. 1(1), **3(3)**
- F6** Words in reg. 88A Title omitted (27.11.2000) by virtue of [The Social Security Amendment \(Employment Zones\) \(No. 2\) Regulations 2000 \(S.I. 2000/2910\)](#), **reg. 5(2)(a)**
- F7** Words in reg. 88A omitted (27.11.2000) by virtue of [The Social Security Amendment \(Employment Zones\) \(No. 2\) Regulations 2000 \(S.I. 2000/2910\)](#), **reg. 5(2)(a)**

**Liable relative payments**

**89.** Regulations 94 to 106, 108 to 115 and Chapter IX of this Part shall not apply to any payment which is to be calculated in accordance with Chapter VII thereof (liable relatives).

**Child support**

**90.** Regulations 94, 96, 97, 103 and 105 and Chapters VII and IX of this Part shall not apply to any payment which is to be calculated in accordance with Chapter VIII of this Part (child support).

**Calculation of income and capital of full-time students**

**91.** The provisions of Chapters II to VI of this Part (income and capital) shall have effect in relation to full-time students and their partners subject to the modifications set out in Chapter IX thereof (full-time students).

**Rounding of fractions**

**92.** Where any calculation under this Part results in a fraction of a penny that fraction shall, if it would be to the claimant's advantage, be treated as a penny, otherwise it shall be disregarded.

*Chapter II*

*Income*

**Calculation of income**

**93.—(1)** For the purposes of [<sup>F8</sup>sections 3(1) (the income-based conditions) and 3A(1) (the conditions for claims by joint-claim couples)] (the income-based conditions) the income of a claimant shall be calculated on a weekly basis—

- (a) by determining in accordance with this Part, other than Chapter VI, the weekly amount of his income; and
- (b) by adding to that amount the weekly income calculated under regulation 116 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) "income" includes capital treated as income under regulation 104 and income which a claimant is treated as possessing under regulation 105 (notional income).

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### Textual Amendments

- F8** Words in [reg. 93\(1\)](#) substituted (19.3.2001) by [The Jobseeker's Allowance \(Joint Claims\) Regulations 2000 \(S.I. 2000/1978\)](#), [reg. 1\(1\)](#), [Sch. 2 para. 38](#)

### Calculation of earnings derived from employed earner's employment and income other than earnings

**94.**—(1) Earnings derived from employment as an employed earner and income which does not consist of earnings shall be taken into account over a period determined in accordance with the following paragraphs and at a weekly amount determined in accordance with regulation 97 (calculation of weekly amount of income).

(2) Subject to the following provisions of this regulation, the period over which a payment is to be taken into account shall be—

- (a) in a case where it is payable in respect of a period, a period equal to the length of that period;
- (b) in any other case, a period equal to 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 net earnings, or in the case of income which does not consist of earnings, the amount of that income less any amount paid by way of tax on that income which is disregarded under paragraph 1 of Schedule 7 (sums to be disregarded in the calculation of income other than earnings), by the amount of jobseeker's allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from that payment under Schedule 6 <sup>[F9]</sup>and Schedule 6A] (sums to be disregarded in the calculation of earnings) or, as the case may be, any paragraph of Schedule 7 other than paragraph 1 of that Schedule, as is appropriate in the claimant's case, and that period shall begin on the date on which the payment is treated as paid under regulation 96.

<sup>[F10]</sup>(2A) The period over which a Career Development Loan, which is paid pursuant to section 2 of the Employment and Training Act 1973, shall be taken into account shall be the period of education and training intended to be supported by that loan.

(2B) Where grant income as defined in Chapter IX of this Part has been paid to a person who ceases to be a full-time student before the end of the period in respect of which that income is payable and, as a consequence, the whole or part of that income falls to be repaid by that person, that income shall be taken into account over the period beginning on the date on which that income is treated as paid under regulation 96 and ending—

- (a) on the date on which repayment is made in full; or
  - <sup>[</sup> where the grant is paid in instalments, on the day before the next instalment would have <sup>F11</sup>(aa) been paid had the claimant remained a student; or]
- (b) on the last date of the academic term or vacation during which that person ceased to be a full-time student,

whichever shall first occur.]

(3) Where earnings not of the same kind are derived from the same source and the periods in respect of which those earnings would, but for this paragraph, fall to be taken into account—

- (a) overlap, wholly or partly, those earnings shall be taken into account over a period equal to the aggregate length of those periods;

- (b) and that period shall begin with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 96 (date on which income is treated as paid).
- (4) In a case to which paragraph (3) applies, earnings under regulation 98 (earnings of employed earners) shall be taken into account in the following order of priority—
- (a) earnings normally derived from the employment;
  - (b) any compensation payment;
  - (c) any holiday pay.
- (5) Where earnings to which regulation 98(1)(b) or (c) (earnings of employed earners) applies are paid in respect of part of a day, those earnings shall be taken into account over a period equal to a day.
- (6) Subject to paragraph (7), the period over which a compensation payment is to be taken into account shall be the period beginning on the date on which the payment is treated as paid under regulation 96 (date on which income is treated as paid) and ending—
- (a) subject to sub-paragraph (b), where the person who made the payment represents that it, or part of it, was paid in lieu of notice of termination of employment or on account of the early termination of a contract of employment for a term certain, on the expiry date;
  - (b) in a case where the person who made the payment represents that it, or part of it, was paid in lieu of consultation under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 <sup>F12</sup>, on the later of—
    - (i) the date on which the consultation period under that section would have ended;
    - (ii) in a case where sub-paragraph (a) also applies, the expiry date; or
    - (iii) the standard date;
  - (c) in any other case, on the standard date.
- (7) The maximum length of time over which a compensation payment may be taken into account under paragraph (6) is 52 weeks from the date on which the payment is treated as paid under regulation 96.
- (8) In this regulation—
- (a) “compensation payment” means any payment to which paragraph (3) of regulation 98 (earnings of employed earners) applies;
  - (b) “the expiry date” means in relation to the termination of a person’s employment—
    - (i) the date on which any period of notice applicable to the person was due to expire, or would have expired had it not been waived; and for this purpose “period of notice” means the period of notice of termination of employment to which a person is entitled by statute or by contract, whichever is the longer, or, if he is not entitled to such notice, the period of notice which is customary in the employment in question; or
    - (ii) subject to paragraph (9), where the person who made the payment represents that the period in respect of which that payment is made is longer than the period of notice referred to in head (i) above, the date on which that longer period is due to expire; or
    - (iii) where the person had a contract of employment for a term certain, the date on which it was due to expire;
  - (c) “the standard date” means the earlier of—
    - (i) the expiry date; and
    - (ii) the last day of the period determined by dividing the amount of the compensation payment by the maximum weekly amount which, on the date on which the payment is treated as paid under regulation 96, is specified in paragraph 8(1)(c) of Schedule 14

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to the Employment Protection (Consolidation) Act 1978 <sup>F13</sup>, and treating the result (less any fraction of a whole number) as a number of weeks.

(9) For the purposes of paragraph (8), if it appears to [<sup>F14</sup>the Secretary of State] in a case to which sub-paragraph (b)(ii) of that paragraph applies that, having regard to the amount of the compensation payment and the level of remuneration normally received by the claimant when he was engaged in the employment in respect of which the compensation payment was made, it is unreasonable to take the payment into account until the date specified in that sub-paragraph, the expiry date shall be the date specified in paragraph (8)(b)(i).

(10) For the purposes of this regulation the claimant's earnings and income which does not consist of earnings shall be calculated in accordance with Chapters III and V respectively of this Part.

#### Textual Amendments

- F9** Words in reg. 94(2)(b) inserted (19.3.2001) by The Jobseeker's Allowance (Joint Claims) Regulations 2000 (S.I. 2000/1978), reg. 1(1), **Sch. 2 para. 39**
- F10** Reg. 94(2A)(2B) inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits and Jobseeker's Allowance (Miscellaneous Amendments) Regulations 1997 (S.I. 1997/65), reg. 1(1)(2), **5(2)**
- F11** Reg. 94(2B)(aa) inserted (coming into force in accordance with reg. 1(2)(3)(4)(5)(6) of the amending S.I.) by The Social Security (Miscellaneous Amendments) Regulations 1998 (S.I. 1998/563), regs. 1, **12**
- F12** 1992 c.52. Section 188 was amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995 (S.I. 1995/2587).
- F13** 1978 c.44.
- F14** Words in reg. 94(9) substituted (18.10.1999) by The Social Security Act 1998 (Commencement No. 11, and Savings and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/2860), art. 3(1), **Sch. 12 para. 2**

#### Calculation of earnings of self-employed earners

**95.—**(1) Except where paragraph (2) applies, where a claimant's income consists of earnings from employment as a self-employed earner the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

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

(2) Where the claimant's earnings consist of royalties or sums paid periodically for or in respect of any copyright those earnings shall be taken into account over a period equal to 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 earnings by the amount of jobseeker's allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 6 [<sup>F15</sup>and Schedule 6A] (earnings to be disregarded) as is appropriate in the claimant's case.

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

### Textual Amendments

- F15** Words in reg. 95(2) inserted (19.3.2001) by [The Jobseeker's Allowance \(Joint Claims\) Regulations 2000 \(S.I. 2000/1978\)](#), reg. 1(1), **Sch. 2 para. 40**

### Date on which income is treated as paid

**96.**—(1) Except where paragraph (2) [<sup>F16</sup>or (3)] applies, a payment of income to which regulation 94 (calculation of earnings derived from employed earner's employment and income other than earnings) applies shall be treated as paid—

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

(2) Income support, maternity allowance, short-term or long-term incapacity benefit, severe disablement allowance or jobseeker's allowance shall be treated as paid on the day of the benefit week in respect of which it is payable.

[<sup>F17</sup>(3) Working families' tax credit under section 128 of the Benefits Act and disabled person's tax credit under section 129 of that Act shall be treated as paid on the first day of the benefit week in which the Tuesday following the day on which the award of that tax credit commenced falls.]

### Textual Amendments

- F16** Words in reg. 96(1) inserted (3.4.2000) by [The Social Security \(Miscellaneous Amendments\) Regulations 2000 \(S.I. 2000/681\)](#), regs. 1(1)(c), **3(2)(a)**
- F17** Reg. 96(3) added (3.4.2000) by [The Social Security \(Miscellaneous Amendments\) Regulations 2000 \(S.I. 2000/681\)](#), regs. 1(1)(c), **3(2)(b)**

### Calculation of weekly amount of income

**97.**—(1) For the purposes of regulation 94 (calculation of earnings derived from employed earner's employment and income other than earnings), subject to paragraphs (2) to [<sup>F18</sup>(7)], 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 a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
  - (iii) in a case 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.

(2) Where a payment for a period not exceeding a week is treated under regulation 96(1)(a) (date on which income is treated as paid) as paid before the first benefit week and a part is to be taken into account for some days only in that week ("the relevant days"), the amount to be taken into account for the relevant days shall be calculated by multiplying the amount of the payment by the number

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equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(3) Where a payment is in respect of a period equal to or in excess of a week and a part thereof is to be taken into account for some days only in a benefit week ("the relevant days"), the amount to be taken into account for the relevant days shall, except where paragraph (4) applies, be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(4) in the case of a payment of—

- (a) maternity allowance, short-term or long-term incapacity benefit or severe disablement allowance, the amount to be taken into account for the relevant days shall be the amount of benefit payable in respect of those days;
- (b) jobseeker's allowance or income support, the amount to be taken into account for the relevant days shall be calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by seven.

(5) Except in the case of a payment which it has not been practicable to treat under regulation 96(1)(b) as paid on the first day of the benefit week in which it is due to be paid, where a payment of income from a particular source is or has been paid regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of that income to be taken into account in any one benefit week shall not exceed the weekly amount determined under paragraph (1)(a) or (b), as the case may be, of the payment which under regulation 96(1)(b) (date on which income is treated as paid) is treated as paid first.

(6) Where the amount of the claimant's income fluctuates and has changed more than once, or a claimant's regular pattern of work is such that he does not work every week, the foregoing paragraphs may be modified so that the weekly amount of his income is determined by reference to his average weekly income—

- (a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (b) in any other case, over a period of five weeks or such other period as may, in the particular case, enable the claimant's average weekly income to be determined more accurately.

[<sup>F19</sup>(7) Where income is taken into account under paragraph (2B) of regulation 94 over the period specified in that paragraph, the amount of that income to be taken into account in respect of any week in that period shall be an amount equal to the amount of that income which would have been taken into account under regulation 131 had the person to whom that income was paid not ceased to be a full-time student.]

#### Textual Amendments

- F18** Word in reg. 97(1) substituted (7.4.1997) by [The Social Security \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/454\)](#), regs. 1(c), **2(11)**
- F19** Reg. 97(7) inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits and Jobseeker's Allowance \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/65\)](#), reg. 1(1)(2), **6(2)**



### Chapter III

#### Employed Earners

##### Earnings of employed earners

**98.**—(1) Subject to paragraphs (2) and (3), "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 compensation payment;
  - (c) any holiday pay except any payable more than four weeks after the termination or interruption of employment but this exception shall not apply to a person who is, or would be, prevented from being entitled to a jobseeker's allowance by section 14 (trade disputes);
  - (d) any payment by way of a retainer;
  - (e) 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;
  - [<sup>F20</sup>(f) any payment or award of compensation made under section 68(2), 69, 71(2)(a), 77 or 79 of the Employment Protection (Consolidation) Act 1978 (remedies for unfair dismissal and compensation);
  - (ff) any payment or remuneration made under section 12, 19 or 47 of the Employment Protection (Consolidation) Act 1978 (guaranteed payments, remuneration whilst suspended from work on medical or maternity grounds);]
  - (g) any award of compensation made under section 156, 157, 161 to 166, 189 or 192 of the Trade Union and Labour Relations (Consolidation) Act 1992 <sup>F21</sup> (compensation for unfair dismissal or redundancy on grounds of involvement in trade union activities, and protective awards).
  - [<sup>F22</sup>(h) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with regulation 18(22) to (25) of the Social Security (Contributions) Regulations 1979.]
- (2) "Earnings" shall not include—
- (a) [<sup>F23</sup>subject to paragraph (2A),] any payment in kind;
  - (b) any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
  - (c) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave<sup>F24</sup>, paternity leave, adoption leave] or is absent from work because he is ill;
  - (d) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - (e) any occupational pension;
  - (f) any redundancy payment within the meaning of section 81(1) of the Employment Protection (Consolidation) Act 1978.
- [<sup>F25</sup>(g) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme]

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[<sup>F26</sup>(2A) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1)(h).]

(3) In this regulation “compensation payment” means any payment made in respect of the termination of employment other than—

- (a) any remuneration or emolument (whether in money or in kind) which accrued in the period before the termination;
- (b) any holiday pay;
- (c) any payment specified in paragraphs (1)(f)[<sup>F27</sup>, (ff),] or (g) or (2);
- (d) any refund of contributions to which that person was entitled under an occupational pension scheme.

#### Textual Amendments

- F20** Reg. 98(1)(f)(ff) substituted for reg. 98(1)(f) (7.10.1996) by [The Jobseeker's Allowance and Income Support \(General\) \(Amendment\) Regulations 1996 \(S.I. 1996/1517\)](#), regs. 1, **22(1)**
- F21** 1992 c.52.
- F22** Reg. 98(1)(h) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security Amendment \(Non-Cash Vouchers\) Regulations 1999 \(S.I. 1999/1509\)](#), regs. 1(1), **2(6)(a)**
- F23** Words in reg. 98(2)(a) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security Amendment \(Non-Cash Vouchers\) Regulations 1999 \(S.I. 1999/1509\)](#), regs. 1(1), **2(6)(b)**
- F24** Words in reg. 98(2)(c) inserted (8.12.2002) by [The Social Security \(Paternity and Adoption\) Amendment Regulations 2002 \(S.I. 2002/2689\)](#), regs. 1(1)(b), **3(5)**
- F25** Reg. 98(2)(g) inserted (7.4.1997) by [The Social Security \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/454\)](#), regs. 1(c), **2(12)**
- F26** Reg. 98(2A) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security Amendment \(Non-Cash Vouchers\) Regulations 1999 \(S.I. 1999/1509\)](#), regs. 1(1), **2(6)(c)**
- F27** Word in reg. 98(3)(c) inserted (7.10.1996) by [The Jobseeker's Allowance and Income Support \(General\) \(Amendment\) Regulations 1996 \(S.I. 1996/1517\)](#), regs. 1, **22(2)**

#### Calculation of net earnings of employed earners

99.—(1) For the purposes of regulation 94 (calculation of earnings of employed earners) the earnings of a claimant derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

(2) Subject to paragraph (3), there shall be disregarded from a claimant's net earnings, any sum, where applicable, specified in paragraphs 1 to 16 and 19 of Schedule 6.

(3) For the purposes of calculating the amount to be deducted in respect of earnings under regulation 80 (contribution-based jobseeker's allowance: deductions in respect of earnings) the disregards specified in paragraphs 5 to 8 and 11 of Schedule 6 shall not apply.

(4) For the purposes of paragraph (1) net earnings shall be calculated by taking into account the gross earnings of the claimant from that employment less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax;
  - (ii) primary Class 1 contributions payable under the Benefits Act; and
- (b) one-half of any sum paid by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

## Chapter IV

### Self-Employed Earners

#### Earnings of self-employed earners

**100.**—(1) Subject to paragraph (2), "earnings", in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance paid under any scheme referred to in regulation 19(1)(r) (circumstances in which a person is to be treated as actively seeking employment: schemes for assisting persons to become self-employed earners) to the claimant for the purpose of assisting him in carrying on his business.

(2) "Earnings" shall not include—

- (a) where a claimant is involved in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge;
- (b) any payment to which paragraph 27 or 28 of Schedule 7 refers (payments in respect of a person accommodated with the claimant under an arrangement made by a local authority or voluntary organisation, and payments made to the claimant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the claimant's care).

[<sup>F28</sup>(c) any sports award.]

#### Textual Amendments

**F28** Reg. 100(2)(c) added (23.8.1999) by [The Social Security Amendment \(Sports Awards\) Regulations 1999 \(S.I. 1999/2165\)](#), regs. 1(1), 7(3)

#### Calculation of net profit of self-employed earners

**101.**—(1) For the purposes of regulation 95 (calculation of 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 regulation 156, 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 Benefits Act calculated in accordance with regulation 102 (deduction of tax and contributions for self-employed earners); and
  - (ii) one half of any premium paid in the period that is relevant under regulation 95 in respect of a personal pension scheme.

(2) Subject to paragraph (3), there shall be disregarded from a claimant's net profit any sum, where applicable, specified in paragraphs 1 to 16 of Schedule 6.

(3) For the purposes of calculating the amount to be deducted in respect of earnings under regulation 80 (contribution-based jobseeker's allowance: deductions in respect of earnings) the disregards in paragraphs 5 to 8 and 11 of Schedule 6 shall not apply.

(4) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (10) applies, be calculated by taking into account the earnings of the employment over the period determined under regulation 95 (calculation of earnings of self-employed earners) less—

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- (a) subject to paragraphs (6) to (8), any expenses wholly and exclusively defrayed 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 Benefits Act, calculated in accordance with regulation 102 (deductions of tax and contributions for self-employed earners); and
  - (c) one-half of any premium paid in the period that is relevant under regulation 95 in respect of a personal pension scheme.
- (5) 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 period determined under regulation 95 less, subject to paragraphs (6) to (8), any expenses wholly and exclusively defrayed in that period for the purposes of that employment.
- (6) Subject to paragraph (7), no deduction shall be made under paragraph (4)(a) or (5) 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 period determined under regulation 95;
  - (e) the repayment of capital on any loan taken out for the purposes of the employment;
  - (f) any expenses incurred in providing business entertainment.
- (7) A deduction shall be made under paragraph (4)(a) or (5) 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
  - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (8) [<sup>F29</sup>The Secretary of State] shall refuse to make a deduction under paragraph (4)(a) or (5) in respect of any expenses where he is not satisfied that the expense has been defrayed or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.
- (9) For the avoidance of doubt—
- (a) a deduction shall not be made under paragraph (4)(a) or (5) 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 VAT paid over VAT received in the period determined under regulation 95;
    - (ii) any income expended in the repair of an existing 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.
- (10) 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 Benefits Act, calculated in accordance with regulation 102 (deductions of tax and contributions for self-employed earners); and
- (b) one half of any premium paid in the period that is relevant under regulation 95 in respect of a personal pension scheme.

(11) Notwithstanding regulation 95 and the foregoing paragraphs, [<sup>F30</sup>the Secretary of State] may assess any item of a claimant's income or expenditure over a period other than that determined under regulation 95 such as may, in the particular case, enable the weekly amount of that item of income or expenditure to be determined more accurately.

(12) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is 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.

#### Textual Amendments

- F29** Words in reg. 101(8) substituted (18.10.1999) by [The Social Security Act 1998 \(Commencement No. 11, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2860\)](#), art. 3(1), [Sch. 12 para. 2](#)
- F30** Words in reg. 101(11) substituted (18.10.1999) by [The Social Security Act 1998 \(Commencement No. 11, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2860\)](#), art. 3(1), [Sch. 12 para. 2](#)

### Deduction of tax and contributions for self-employed earners

**102.**—(1) The amount to be deducted in respect of income tax under regulation 101(1)(b)(i), (4)(b)(i) or (10)(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 lower rate or, as the case may be, the lower rate and the basic rate of tax less only the personal relief to which the claimant is entitled under sections 257(1), 257A(1) and 259 of the Income and Corporation Taxes Act 1988 <sup>F31</sup> (personal reliefs) as is appropriate to his circumstances; but, if the period determined under regulation 95 is less than a year, the earnings to which the lower rate of tax is to be applied and 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 101(1)(b)(i), (4)(b)(ii) or (10)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Benefits Act at the rate applicable at the date of claim except where the claimant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which the date of claim falls; but if the period determined under regulation 95 is less than a year, the amount specified for that tax year shall be reduced pro rata; and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but if the period determined under regulation 95 is less than a year, those limits shall be reduced pro rata.

(3) In this regulation "chargeable income" means—

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- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (4)(a) or, as the case may be, (5), of regulation 101;
- (b) in the case of employment as a child minder, one-third of the earnings of that employment.

#### Textual Amendments

**F31** 1988 c.1; sections 257 to 257F were substituted for section 257 by section 33 of the [Finance Act 1988 \(c.39\)](#); section 259 was amended by sections 30 and 35 of the Finance Act 1988, section 20 of the [Finance \(No.2\) Act 1992 \(c.48\)](#), and section 77 and Schedule 8, paragraph 6 of the [Finance Act 1994 \(c.9\)](#).

### <sup>F32</sup>Chapter IVA

#### Participants in the Self-Employment Route <sup>F33</sup>...

#### Textual Amendments

**F32** Pt. 8 Ch. 4A added (1.6.1998) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 1998 \(S.I. 1998/1174\)](#), regs. 1(1), **3(4)**

**F33** Words in Pt. 8 Ch. 4A Title omitted (27.11.2000) by virtue of [The Social Security Amendment \(Employment Zones\) \(No. 2\) Regulations 2000 \(S.I. 2000/2910\)](#), **reg. 5(2)(c)**

#### Interpretation

**102A.** In this Chapter—

<sup>F34</sup> ...

“special account” means, where a person was carrying on a commercial activity in respect of which assistance was received under the self-employment route, the account into which the gross receipts from that activity were payable during the period in respect of which such assistance was received.

#### Textual Amendments

**F34** Words in reg. 102A omitted (27.11.2000) by virtue of [The Social Security Amendment \(Employment Zones\) \(No. 2\) Regulations 2000 \(S.I. 2000/2910\)](#), **reg. 5(2)(b)**

#### Modifications etc. (not altering text)

**C1** Reg. 102A modified (temp.) (29.11.1999) by [The Social Security \(New Deal Pilot\) Regulations 1999 \(S.I. 1999/3156\)](#), regs. 1(1), **18(1)** (with regs. 1(2), 11, 19)

**C2** Reg. 102A modified (temp. from 28.11.2000 until 27.11.2001) by [The Social Security \(New Deal Pilot\) Regulations 2000 \(S.I. 2000/3134\)](#), regs. 1(1)(b), **18(1)(a)**

#### Treatment of gross receipts of participants in the self-employment route <sup>F35</sup>...

**102B.** The gross receipts of a commercial activity carried on by a person in respect of which assistance is received under the self-employment route, shall be taken into account in accordance with the following provisions of this Chapter.

### Textual Amendments

- F35** Words in reg. 102B Title omitted (27.11.2000) by virtue of [The Social Security Amendment \(Employment Zones\) \(No. 2\) Regulations 2000 \(S.I. 2000/2910\)](#), regs. 1(1), **5(2)(c)**

### Calculation of income of participants in the self-employment route <sup>F36</sup>...

**102C.**—(1) The income of a person who has received assistance under the self-employment route shall be calculated by taking into account the whole of the monies in the special account at the end of the last day upon which such assistance was received and deducting from those monies—

- (a) an amount in respect of income tax calculated in accordance with regulation 102D (deduction in respect of tax for participants in the self-employment route <sup>F37</sup> ...; and
- (b) any sum to which paragraph (4) refers.

(2) Income calculated pursuant to paragraph (1) shall be apportioned equally over a period which starts on the date the income is treated as paid under paragraph (3) and is equal in length to the period beginning with the day upon which assistance was first received under the self-employment route and ending on the last day upon which such assistance was received.

(3) Income calculated pursuant to paragraph (1) shall be treated as paid—

- (a) in the case where it is due to be paid before the first benefit week in respect of which the participant or his partner [<sup>F38</sup>or, in the case of a joint-claim couple, the participant and the other member of the couple of which the participant is a member,] first claims a jobseeker's allowance following the last day upon which assistance was received under the self-employment route, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid.

(4) This paragraph refers, where applicable in each benefit week in respect of which income calculated pursuant to paragraph (1) is taken into account pursuant to paragraphs (2) and (3), to the sums which would have been disregarded under paragraphs 5 to 8, 11 and 12 of Schedule 6 [<sup>F39</sup>or paragraphs 1, 2, 5 and 6 of Schedule 6A] had the income been earnings.

### Textual Amendments

- F36** Words in reg. 102C Title omitted (27.11.2000) by virtue of [The Social Security Amendment \(Employment Zones\) \(No. 2\) Regulations 2000 \(S.I. 2000/2910\)](#), regs. 1(1), **5(2)(c)**
- F37** Words in reg. 102C(1)(a) omitted (27.11.2000) by virtue of [The Social Security Amendment \(Employment Zones\) \(No. 2\) Regulations 2000 \(S.I. 2000/2910\)](#), **reg. 5(2)(c)**
- F38** Words in reg. 102C(3)(a) inserted (19.3.2001) by [The Jobseeker's Allowance \(Joint Claims\) Regulations 2000 \(S.I. 2000/1978\)](#), reg. 1(1), **Sch. 2 para. 41(a)**
- F39** Words in reg. 102C(4) inserted (19.3.2001) by [The Jobseeker's Allowance \(Joint Claims\) Regulations 2000 \(S.I. 2000/1978\)](#), reg. 1(1), **Sch. 2 para. 41(b)**

### Deduction in respect of tax for participants in the self-employment route <sup>F40</sup>...

**102D.**—(1) The amount to be deducted in respect of income tax under regulation 102C(1)(a) (calculation of income of participants in the self-employment route <sup>F41</sup> ...) in respect of the period determined under regulation 102C(2) shall be calculated as if—

- (a) the chargeable income is the only income chargeable to tax;

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- (b) the personal reliefs which are applicable to the person receiving assistance under the self-employment route by virtue of sections 257(1), 257A(1) and 259 of the Income and Corporation Taxes Act 1988 (personal reliefs) are allowable against that income; and
- (c) the rate at which the chargeable income less the personal relief is assessable to income tax is the lower rate of tax or, as the case may be, the lower rate and the basic rate of tax.

(2) For the purpose of paragraph (1), the lower rate of tax to be applied and the amount of the personal relief deductible shall, where the period determined under regulation 102C(2) is less than a year, be calculated on a pro rata basis.

(3) In this regulation, "chargeable income" means the monies in the special account at the end of the last day upon which assistance was received under the self-employment route.]

#### Textual Amendments

- F40** Words in reg. 102D Title omitted (27.11.2000) by virtue of [The Social Security Amendment \(Employment Zones\) \(No. 2\) Regulations 2000 \(S.I. 2000/2910\)](#), [reg. 5\(2\)\(c\)](#)
- F41** Words in reg. 102D(1) omitted (27.11.2000) by virtue of [The Social Security Amendment \(Employment Zones\) \(No. 2\) Regulations 2000 \(S.I. 2000/2910\)](#), [reg. 5\(2\)\(c\)](#)

### Chapter V

#### Other Income

#### Calculation of income other than earnings

**103.**—(1) For the purposes of regulation 94 (calculation of income other than earnings) the income of a claimant which does not consist of earnings to be taken into account shall, subject to the following provisions of this regulation, be his gross income and any capital treated as income under regulations 104 and 106 (capital treated as income and modifications in respect of children and young persons).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1) any sum, where applicable, specified in Schedule 7.

(3) Where the payment of any benefit under the Act or under the 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 to which the beneficiary is entitled.

(4) Where the claimant is in receipt of payments under the earnings top-up scheme operated by the Secretary of State for Social Security<sup>F42</sup>, and those payments are subject to any deduction by way of recovery, the amount to be taken into account under paragraph (1) shall be the amount that the claimant would have received but for that deduction.

[<sup>F43</sup>(5) Paragraph (5ZA) applies where—

- (a) a relevant payment has been made to a person in an academic year; and
- (b) that person abandons, or is dismissed from, his course of study before the payment to him of the final instalment of the relevant payment.

(5ZA) The amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a person to whom paragraph (5) applies, shall be calculated by applying the formula—

$$\frac{A - (B \times C)}{D}$$

where—



A = the total amount of the relevant payment which that person would have received had he remained a student until the last day of the academic term in which he abandoned, or was dismissed from, his course, less any deduction under regulation 136(5);

B = the number of benefit weeks from the benefit week immediately following that which includes the first day of that academic year to the benefit week immediately before that which includes the day on which the person abandoned, or was dismissed from, his course;

C = the weekly amount of the relevant payment, before the application of the £10 disregard, which would have been taken into account as income under regulation 136(2) had the person not abandoned or been dismissed from, his course and, in the case of a person who was not entitled to a jobseeker's allowance immediately before he abandoned or was dismissed from his course, had that person, at that time, been entitled to a jobseeker's allowance;

D = the number of benefit weeks in the assessment period.

(5ZB) In paragraphs (5) and (5ZA)—

“academic year” and “student loan” shall have the same meanings as for the purposes of Chapter IX of this Part;

“assessment period” means the period beginning with the benefit week which includes the day on which the person abandoned, or was dismissed from, his course and ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that person and for the purposes of this definition, “quarter” shall have the same meaning as for the purposes of the Education (Student Support) Regulations 2001;

“relevant payment” means either a student loan or an amount intended for the maintenance of dependants referred to in regulation 131(5A) or both.]

[<sup>F44</sup>(5A) In the case of income to which regulation 94(2B) applies (calculation of income of former full-time students), the amount of income to be taken into account for the purposes of paragraph (1) shall be the amount of that income calculated in accordance with regulation 97(7) and on the basis that none of that income has been repaid.]

(6) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1)

[<sup>F45</sup>(a) any payment to which regulation 98(2)(a) to (e) or 100(2) (payments not earnings) applies; or

(b) in the case of a claimant who is receiving support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.]

### Textual Amendments

**F42** Copies of the rules relating to the earnings top-up scheme are available from the Department of Social Security, B2D, 9th Floor, The Adelphi, Adam Street, London WC2N 6HT.

**F43** Reg. 103(5)(5ZA)(5ZB) substituted for reg. 103(5) (1.8.2001) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2001 \(S.I. 2001/2319\)](#), regs. 1(1)(a), **5(2)**

**F44** Reg. 103(5A) inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits and Jobseeker's Allowance \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/65\)](#), reg. 1(1)(2), **7(2)**

**F45** Reg. 103(6)(a)(b) substituted for words (3.4.2000) by [The Social Security \(Immigration and Asylum\) Consequential Amendments Regulations 2000 \(S.I. 2000/636\)](#), regs. 1(2), **4(4)**

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## Capital treated as income

**104.**—(1) Any capital payable by instalments which are outstanding on the first day in respect of which an income-based jobseeker's allowance is payable, or, in the case of a <sup>F46</sup>suppression], the date of that <sup>F46</sup>suppression], shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI of this Part exceeds £8,000 <sup>F47</sup>or, in a case where regulation 107(aa) applies, £12,000], <sup>F48</sup>or, in a case where regulation 107(b) applies, £16,000] be treated as income.

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

(3) In the case of a person who is, or would be, prevented from being entitled to a jobseeker's allowance by section 14 (trade disputes), any payment under <sup>F49</sup>section 17, 23B, 23C or 24A of the Children Act 1989<sup>F50</sup> or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968 <sup>F51</sup>(local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) shall be treated as income.

(4) Any earnings to the extent that they are not a payment of income shall be treated as income.

<sup>F52</sup>(5) Any Career Development Loan paid pursuant to section 2 of the Employment and Training Act 1973 shall be treated as income.]

<sup>F53</sup>(6) Where an agreement or court order provides that payments shall be made to the claimant in consequence of any personal injury to the claimant and that such payments are to be made, wholly or partly, by way of periodical payments, any such periodical payments received by the claimant (but not a payment which is treated as capital by virtue of this Part), shall be treated as income.]

### Textual Amendments

**F46** Words in reg. 104(1) substituted (18.10.1999) by [The Social Security Act 1998 \(Commencement No. 11, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2860\)](#), art. 3(1), [Sch. 12 para. 5](#)

**F47** Words in [reg. 104\(1\)](#) inserted (for specified purposes and with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security Amendment \(Capital Limits and Earnings Disregards\) Regulations 2000 \(S.I. 2000/2545\)](#), regs. 1(1)(c), [2\(2\)\(a\)](#)

**F48** Words in reg. 104(1) inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits and Jobseeker's Allowance \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/65\)](#), reg. 1(1)(2), [3\(2\)](#)

**F49** Words in [reg. 104\(3\)](#) substituted (1.10.2001) by [The Children \(Leaving Care\) Act 2000 \(Commencement No. 2 and Consequential Provisions\) Order 2001 \(S.I. 2001/3070\)](#), art. 3(1), [Sch. 4 \(c\)\(i\)](#)

**F50** 1989 c.41.

**F51** 1968 c.49.

**F52** Reg. 104(5) added (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits and Jobseeker's Allowance \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/65\)](#), reg. 1(1)(2), [3\(3\)\(f\)](#)

**F53** Reg. 104(6) added (28.10.2002) by [The Social Security Amendment \(Personal Injury Payments\) Regulations 2002 \(S.I. 2002/2442\)](#), regs. 1(1), [2\(d\)](#)

## Notional income

**105.**—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to a jobseeker's allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to, or increasing the amount of, income support.

(2) Except in the case of—

- (a) a discretionary trust;
  - (b) a trust derived from a payment made in consequence of a personal injury;
  - <sup>F54</sup>(c) child benefit to which paragraph (2A) refers;]
  - (d) [<sup>F55</sup>working families' tax credit] or [<sup>F56</sup>disabled person's tax credit];
  - (e) a jobseeker's allowance;
  - (f) payments under the earnings top-up scheme operated by the Secretary of State for Social Security;
  - (g) a personal pension scheme where the claimant is aged under 60; [<sup>F57</sup>or
  - (h) any sum to which paragraph 42(a) or 43(a) of Schedule 8 (disregard of compensation for personal injuries which is administered by the Court) refers]; [<sup>F58</sup>or
  - (i) rehabilitation allowance made under section 2 of the Employment and Training Act 1973],
- income which would become available to the claimant upon application being made but which has not been acquired by him shall be treated as possessed by him but only from the date on which it could be expected to be acquired were an application made.

<sup>F59</sup>(2A) This paragraph refers to child benefit payable in accordance with regulation 2(1)(a)(ii) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 (weekly rate for only, elder or eldest child of a lone parent) but only to the extent that it exceeds the amount specified in regulation 2(1)(a)(i) of those Regulations.]

(3) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, and—

- (a) in the case of a personal pension scheme other than one referred to in sub-paragraph (b), he fails to purchase an annuity with the funds available in that scheme where—
  - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
  - (ii) he fails to take any necessary action to secure that the whole or part of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
  - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988 <sup>F60</sup>, he fails to purchase an annuity with the funds available under that contract or scheme,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(4) The amount of any income foregone in a case to which either head (i) or (ii) of paragraph (3) (a) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by [<sup>F61</sup>the Secretary of State] who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987 <sup>F62</sup>.

(5) The amount of any income foregone in a case to which either head (iii) of paragraph (3) (a), or paragraph (3)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the fund held under the relevant personal pension scheme been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (4).

(6) Subject to paragraph (7), any income which is due to be paid to the claimant but has not been paid to him, shall be treated as possessed by the claimant.

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(7) Paragraph (6) shall not apply to—

- (a) any amount to which paragraph (8) or (9) applies;
  - (b) a payment to which section 74(2) or (3) of the Administration Act applies (abatement of prescribed payments from public funds which are not made before the prescribed date, and abatement from prescribed benefits where maintenance not paid); and
  - (c) a payment from a discretionary trust, or a trust derived from a payment made in consequence of a personal injury.
- [<sup>F63</sup>(d) any earnings which are due to an employed earner on the termination of his employment by reason of redundancy but which have not been paid to him.]

(8) This paragraph applies to an amount which is due to be paid to the claimant under an occupational pension scheme but which is not paid because the trustees or managers of the scheme have suspended or ceased payment due to an insufficiency of resources.

(9) This paragraph applies to any amount by which a payment made to the claimant from an occupational pension scheme falls short of the payment to which he was due under the scheme where the shortfall arises because the trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities.

(10) [<sup>F64</sup>Any payment of income, other than a payment of income specified in paragraph (10A)—]

- (a) to a third party in respect of a single claimant or in respect of a single claimant or in respect of a member of the family shall be treated—
  - (i) in a case where that payment is derived from a payment of any benefit under the Act or under the Benefits Act, a war disablement pension or war widows pension [<sup>F65</sup>or war widower's pension], as possessed by that single claimant, if it would normally be paid to him, or as possessed by that member of the family, if it would normally be paid to that member;
  - [<sup>F66</sup>(ia) in a case where that payment is a payment of an occupational pension or is a pension or other periodical payment made under a personal pension scheme, as possessed by that single claimant or, as the case may be, by that member;]
  - (ii) in any other case, as possessed by that single claimant or by that member of the family to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable, or any housing costs to the extent that they are met under regulation 83(f)[<sup>F67</sup>, 84(1)(g), 86A(d) or 86B(e)], of that single claimant or, as the case may be, of any member of the family, or is used for any council tax or water charges for which that claimant or member is liable;
- (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 the 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;

but, except where sub-paragraph (a)(i) applies and in the case of a person who is, or would be, prevented from being entitled to a jobseeker's allowance by section 14 (trade disputes), this paragraph shall not apply to any payment in kind.

[<sup>F68</sup>(10A) Paragraph (10) shall not apply in respect of a payment of income made—

- (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Fund, the Eileen Trust or the Independent Living Funds;
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 (concessionary coal); or
- (c) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation—

- (i) in an employment programme specified in regulation 75(1)(a)(ii);
- (ii) in a training scheme specified in regulation 75(1)(b)(ii); or
  - [ in the Intensive Activity Period for 50 plus or in the Intensive Activity Period<sup>F69</sup>(ia) specified in regulation 75(1)(a)(iv); or]
  - (iii) in a qualifying course within the meaning specified in regulation 17A(7).]
- [<sup>F70</sup>(d) under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where—
  - (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980 ;
  - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
  - (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.]
- (11) Where the claimant lives in a residential care home or a nursing home, or is temporarily absent from such a home, any payment made by a person other than the claimant or a member of his family in respect of some or all of the cost of maintaining the claimant or a member of his family in that home shall be treated as possessed by the claimant or by that member of his family.
  - [<sup>F71</sup>(11A) Where the amount of a subsistence allowance paid to a claimant in a benefit week is less than the amount of income-based jobseeker's allowance that person would have received in that benefit week had it been payable to him, less 50p, he shall be treated as possessing the amount which is equal to the amount of income-based jobseeker's allowance which he would have received in that week, less 50p.]
- (12) Where a claimant's earnings are not ascertainable at the time of the determination of the claim or of any [<sup>F72</sup>review or supersession][<sup>F73</sup>the Secretary of State] shall treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.
  - (13) [<sup>F74</sup>Subject to paragraph (13A),] 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,[<sup>F75</sup>the Secretary of State] shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies him that the means of that person are insufficient for him to pay or to pay more for the service; <sup>F76</sup> ...
  - [<sup>F77</sup>(13A) Paragraph (13) shall not apply—
    - (a) to a claimant who is engaged by a charitable or voluntary organisation or who is a volunteer if the Secretary of State is satisfied in any of those cases that it is reasonable for him to provide those services free of charge;
    - (b) in a case where the service is performed in connection with—
      - (i) the claimant's participation in an employment or training programme in accordance with regulation 19(1)(q)[<sup>F78</sup>, other than where the service is performed in connection with the claimant's participation in the Intensive Activity Period for 50 plus or in the Intensive Activity Period specified in regulation 75(1)(a)(iv)]; or

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- (ii) the claimant's or the claimant's partner's participation in an employment or training programme as defined in regulation 19(3) for which a training allowance is not payable or, where such an allowance is payable, it is payable for the sole purpose of reimbursement of travelling or meal expenses to the person participating in that programme.]

(14) Where a claimant is treated as possessing any income under any of paragraphs (1) to (11) 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.

(15) Where a claimant is treated as possessing any earnings under paragraphs (12) or (13) 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 (4) of regulation 99 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account the earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of tax in the year of assessment less only the personal relief to which the claimant is entitled under sections 257(1), 257A(1) and 259 of the Income and Corporation Taxes Act 1988<sup>F79</sup> (personal reliefs) as is appropriate to his circumstances; but, if the period over which those earnings are to be taken into account is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis;
- (b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the Benefits Act, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act; and
- (c) one-half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

(16) In this regulation—

“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;

“pension fund holder” means with respect to a personal pension scheme the trustees, managers or scheme administrators, as the case may be, of the scheme concerned;

“resources” has the same meaning as in section 181 of the Pension Schemes Act 1993<sup>F80</sup>.

#### Textual Amendments

- F54** Reg. 105(2)(c) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Child Benefit, Child Support and Social Security \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/1803\)](#), regs. 1(b), **42(a)**
- F55** Words in reg. 105(2)(d) substituted (5.10.1999) by [The Social Security and Child Support \(Tax Credits\) Consequential Amendments Regulations 1999 \(S.I. 1999/2566\)](#), regs. 1(2), 2(1), **Sch. 2 Pt. I**
- F56** Words in reg. 105(2)(d) substituted (5.10.1999) by [The Social Security and Child Support \(Tax Credits\) Consequential Amendments Regulations 1999 \(S.I. 1999/2566\)](#), regs. 1(2), 2(2), **Sch. 2 Pt. II**
- F57** Word added in reg. 105(2)(g) (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income-related Benefits and Jobseekers Allowance \(Amendment\) \(No. 2\) Regulations 1997 \(S.I. 1997/2197\)](#), regs. 1(2), **6**

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- F58** Reg. 105(2)(i) and word inserted (coming into force in accordance with reg. 1(2)(3)(4)(5)(6) of the amending S.I.) by The Social Security (Miscellaneous Amendments) Regulations 1998 (S.I. 1998/563), regs. 1, **6(1)(2)(f)**
- F59** Reg. 105(2A) inserted (with effect in accordance with reg. 1(3) of the amending S.I.) by The Child Benefit, Child Support and Social Security (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/1803), regs. 1(b), **42(b)**
- F60** 1988 c.1.
- F61** Words in reg. 105(4) substituted (18.10.1999) by The Social Security Act 1998 (Commencement No. 11, and Savings and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/2860), art. 3(1), **Sch. 12 para. 2**
- F62** S.I. 1987/1968; paragraph (5) was added by S.I.1995/2303.
- F63** Reg. 105(7)(d) added (7.1.2000) by The Income Support (General) and Jobseeker's Allowance Amendment (No. 2) Regulations 1999 (S.I. 1999/3324), regs. 1, **3**
- F64** Words in reg. 105(10) substituted (24.9.1998) by The Social Security Amendment (New Deal) (No.2) Regulations 1998 (S.I. 1998/2117), regs. 1(1), **2(1)(a)**
- F65** Words in reg. 105(10)(a)(i) inserted (8.4.2002) by The Social Security (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/841), regs. 1(1), **3(2)**
- F66** Reg. 105(10)(a)(ia) inserted (15.11.1999) by The Social Security Amendment (Notional Income and Capital) Regulations 1999 (S.I. 1999/2640), regs. 1(1), **2(1)(b)**
- F67** Words in reg. 105(10)(a)(ii) substituted (19.3.2001) by The Jobseeker's Allowance (Joint Claims) Regulations 2000 (S.I. 2000/1978), reg. 1(1), **Sch. 2 para. 42**
- F68** Reg. 105(10A) inserted (24.9.1998) by The Social Security Amendment (New Deal) (No.2) Regulations 1998 (S.I. 1998/2117), regs. 1(1), **2(1)(b)**
- F69** Reg. 105(10A)(c)(ia) inserted (9.4.2001) by The Social Security Amendment (New Deal) Regulations 2001 (S.I. 2001/1029), regs. 1(1), **7(a)**
- F70** Reg. 105(10A)(d) added (15.11.1999) by The Social Security Amendment (Notional Income and Capital) Regulations 1999 (S.I. 1999/2640), regs. 1(1), **2(3)(d)**
- F71** Reg. 105(11A) inserted (3.4.2000) by The Social Security Amendment (Employment Zones) Regulations 2000 (S.I. 2000/724), regs. 1(1), **3(1)(b)**
- F72** Words in reg. 105(12) substituted (18.10.1999) by The Social Security Act 1998 (Commencement No. 11, and Savings and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/2860), art. 3(1), **Sch. 12 para. 6**
- F73** Words in reg. 105(12) substituted (18.10.1999) by The Social Security Act 1998 (Commencement No. 11, and Savings and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/2860), art. 3(1), **Sch. 12 para. 2**
- F74** Words in reg. 105(13) inserted (3.4.2000) by The Social Security (Approved Work) Regulations 2000 (S.I. 2000/678), regs. 1, **2(1)(a)(i)**
- F75** Words in reg. 105(13) substituted (18.10.1999) by The Social Security Act 1998 (Commencement No. 11, and Savings and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/2860), art. 3(1), **Sch. 12 para. 2**
- F76** Words in reg. 105(13) omitted (3.4.2000) by virtue of The Social Security (Approved Work) Regulations 2000 (S.I. 2000/678), regs. 1, **2(1)(a)(ii)**
- F77** Reg. 105(13A) inserted (3.4.2000) by The Social Security (Approved Work) Regulations 2000 (S.I. 2000/678), regs. 1, **2(1)(b)**
- F78** Words in reg. 105(13A)(b)(i) added (9.4.2001) by The Social Security Amendment (New Deal) Regulations 2001 (S.I. 2001/1029), regs. 1(1), **7(b)**
- F79** 1988 c.1; sections 257 to 257F were substituted for section 257 by section 33 of the Finance Act 1988 (c.39); section 259 was amended by sections 30 and 35 of the Finance Act 1988, section 20 of the Finance (No.2) Act 1992 (c.48), and section 77 and Schedule 8, paragraph 6 of the Finance Act 1994 (c.9).
- F80** 1993 c.48.

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#### **Modifications etc. (not altering text)**

- C3** Reg. 105 modified (temp. from 28.11.2000 until 27.11.2001) by [The Social Security \(New Deal Pilot\) Regulations 2000 \(S.I. 2000/3134\)](#), regs. 1(1)(b), **14(1)(c)**
- C4** Reg. 105(10A)(c) modified (temp. from 28.11.2000 until 27.11.2001) by [The Social Security \(New Deal Pilot\) Regulations 2000 \(S.I. 2000/3134\)](#), regs. 1(1)(b), **14(1)(a)**
- C5** Reg. 105(13) modified (temp. from 28.11.2000 until 27.11.2001) by [The Social Security \(New Deal Pilot\) Regulations 2000 \(S.I. 2000/3134\)](#), regs. 1(1)(b), **14(1)(b)**

#### **Modifications in respect of children and young persons**

**106.**—(1) Any capital of a child or young person payable by instalments which are outstanding on the first day in respect of which an income-based jobseeker's allowance is payable or, in the case of a [<sup>F81</sup>suppression], the date of that [<sup>F81</sup>suppression], shall, if the aggregate of the instalments outstanding and the amount of that child or young person's other capital calculated in accordance with Chapter VI of this Part in like manner as for the claimant would exceed £3,000, be treated as income.

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

- (a) any payment made to the educational establishment, in respect of that child's or young person's maintenance, by or on behalf of a person who is not a member of the family or by a member of the family out of funds contributed for that purpose by a person who is not a member of the family, shall be treated as income of that child or young person but it shall only be taken into account over periods during which that child or young person is present at that educational establishment; and
- (b) if a payment has been so made, for any period in a benefit week in term-time during which that child or young person returns home, he shall be treated as possessing an amount of income in that week calculated by multiplying the amount of [<sup>F82</sup>personal allowance, any disabled child premium and any enhanced disability premium] applicable in respect of that child or young person by the number equal to the number of days in that week in which he was present at his educational establishment and dividing the product by seven; but this sub-paragraph shall not apply where the educational establishment is provided under section 8 of the Education Act 1944 <sup>F83</sup> (duty of local authority to secure primary and secondary schools) by a local education authority or where the payment is made under section 49 or 50 of the Education (Scotland) Act 1980 <sup>F84</sup> (power of education authority to assist persons).

(3) Where a child or young person—

- (a) is resident at an educational establishment and he is wholly or partly maintained at that establishment by a local education authority under section 8 of the Education Act 1944; or
- (b) is maintained at an educational establishment under section 49 or 50 of the Education (Scotland) Act 1980, he shall for each day he is present at that establishment be treated as possessing an amount of income equal to the sum obtained by dividing the amount of [<sup>F82</sup>personal allowance, any disabled child premium and any enhanced disability premium] applicable in respect of him by seven.

(4) Where the income of a child or young person who is a member of the claimant's family calculated in accordance with Chapters I to V of this Part exceeds the amount of the [<sup>F82</sup>personal allowance, any disabled child premium and any enhanced disability premium] applicable in respect of that child or young person, the excess shall not be treated as the income of the claimant.



(5) Where the capital of a child or young person if calculated in accordance with Chapter VI of this Part in like manner as for the claimant, except as provided in paragraph (1), would exceed £3,000, any income of that child or young person shall not be treated as the income of the claimant.

(6) In calculating the net earnings or net profit of a child or young person there shall be disregarded (in addition to any sum which falls to be disregarded under paragraphs 14 to 16), any sum specified in paragraphs 17 and 18 of Schedule 6 (earnings to be disregarded).

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

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

(9) For the purposes of this regulation, a child or young person shall not be treated as present at his educational establishment on any day if on that day he spends the night with the claimant or a member of his household.

#### Textual Amendments

- F81** Words in reg. 106(1) substituted (18.10.1999) by [The Social Security Act 1998 \(Commencement No. 11, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2860\)](#), art. 3(1), [Sch. 12 para. 5](#)
- F82** Words in reg. 106 substituted (9.4.2001) by [The Social Security Amendment \(Enhanced Disability Premium\) Regulations 2000 \(S.I. 2000/2629\)](#), regs. 1(c), [5\(a\)](#)
- F83** 1944 c.31; section 8 was amended by the [Education Act 1980 \(c.20\)](#), [section 38\(6\)](#) and Schedule 7; the [Further and Higher Education Act 1992 \(c.13\)](#), [sections 12\(1\)](#) and 93 and Schedule 8; and the [Education Act 1993 \(c.35\)](#), [section 307](#) and Schedules 19 and 21.
- F84** 1980 c.44; section 50 was amended by the [Education \(Scotland\) Act 1981 \(c.58\)](#), [section 2](#).

## Chapter VI

### Capital

#### Capital limit

**[<sup>F85</sup>107.** For the purposes of section 13(1) [<sup>F86</sup>and (2A)] (no entitlement to an income-based jobseeker's allowance if capital exceeds a prescribed amount)—

(a) except where paragraph [<sup>F87</sup>(aa) or] (b) applies, the prescribed amount is £8,000;

**[<sup>F88</sup>(aa)** where the circumstances prescribed in regulation 116(1ZA) apply in the claimant's case, the prescribed amount is £12,000;]

(b) in the case to which regulation 116(1B) applies, the prescribed amount is £16,000.]

#### Textual Amendments

- F85** Reg. 107 substituted (7.10.1996) by [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), regs. 1(1), [11](#)
- F86** Words in reg. 107 inserted (19.3.2001) by [The Jobseeker's Allowance \(Joint Claims\) Regulations 2000 \(S.I. 2000/1978\)](#), reg. 1(1), [Sch. 2 para. 43](#)

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- F87** Words in [reg. 107\(a\)](#) inserted (for specified purposes and with effect in accordance with [reg. 1\(3\)](#) of the amending S.I.) by [The Social Security Amendment \(Capital Limits and Earnings Disregards\) Regulations 2000 \(S.I. 2000/2545\)](#), [regs. 1\(1\)\(c\), 2\(2\)\(b\)\(i\)](#)
- F88** [Reg. 107\(aa\)](#) inserted (for specified purposes and with effect in accordance with [reg. 1\(3\)](#) of the amending S.I.) by [The Social Security Amendment \(Capital Limits and Earnings Disregards\) Regulations 2000 \(S.I. 2000/2545\)](#), [regs. 1\(1\)\(c\), 2\(2\)\(b\)\(ii\)](#)

### Calculation of capital

**108.**—(1) Subject to paragraph (2), the capital of a claimant to be taken into account shall be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 110.

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 8.

### Disregard of capital of child or young person

**109.** 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

**110.**—(1) Any bounty derived from employment to which paragraph 9 of Schedule 6 applies and paid at intervals of at least one year shall be treated as capital.

(2) Except in the case of an amount to which section 15(2)(c)(i) (refund of tax in trade dispute cases) applies, 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 98(1)(c) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4 to 8, 11 or 17 of Schedule 8, 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) Subject to paragraph (6), 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.

(6) Paragraph (5) shall not apply to a person who is, or would be, prevented from being entitled to a jobseeker's allowance by section 14 (trade disputes).

(7) Any payment under section 30 of the Prison Act 1952 <sup>F89</sup> (payments for discharged prisoners) or allowance under section 17 of the Prisons (Scotland) Act 1989 <sup>F90</sup> (allowances to prisoners on discharge) shall be treated as capital.

(8) Any payment made by a local authority which represents arrears of payments under paragraph 15 of Schedule 1 to the Children Act 1989 <sup>F91</sup> (power of a local authority to make contributions to a person with whom a child lives as a result of a residence order) or under section 50 of the Children Act 1975 <sup>F92</sup> (contributions to a custodian towards the cost of accommodation and maintenance of a child) [<sup>F93</sup> or any payment, made by an authority, as defined in Article 2 of the Children Order, which represents arrears of payments under Article 15 of, and paragraph 17 of Schedule 1 to, that Order (contribution by an authority to child's maintenance),] shall be treated as capital.

(9) Any charitable or voluntary payment which is not made or not due to be made at regular intervals, other than one to which paragraph (10) applies, shall be treated as capital.

(10) This paragraph applies to a payment—

- (a) which is made to a person who is, or would be, prevented from being entitled to a jobseeker's allowance by section 14 (trade disputes);
- (b) to which regulation 106(2) (modifications in respect of children and young persons) applies; or
- (c) which is made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Fund, the Eileen Trust or the Independent Living Funds.

[<sup>F94</sup>(11) Any arrears of subsistence allowance which are paid to a claimant as a lump sum shall be treated as capital.]

**Textual Amendments**

- F89** 1952 c.52; section 30 was substituted by section 66(3) of the [Criminal Justice Act 1967 \(c.80\)](#).
- F90** 1989 c.45.
- F91** 1989 c.41.
- F92** 1975 c.72.
- F93** Words in reg. 110(8) inserted (coming into force in accordance with reg. 1(2)(3)(4)(5)(6) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 1998 \(S.I. 1998/563\)](#), regs. 1, **14(2)**
- F94** Reg. 110(11) added (3.4.2000) by [The Social Security Amendment \(Employment Zones\) Regulations 2000 \(S.I. 2000/724\)](#), regs. 1(1), **3(2)(d)**

**Calculation of capital in the United Kingdom**

**111.** 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 first day on which an income-based jobseeker's allowance is payable or, in the case of a [<sup>F95</sup>suppression], the date of that [<sup>F95</sup>suppression], 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.

**Textual Amendments**

- F95** Words in reg. 111(b)(i) substituted (18.10.1999) by [The Social Security Act 1998 \(Commencement No. 11, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2860\)](#), art. 3(1), **Sch. 12 para. 5**

**Calculation of capital outside the United Kingdom**

**112.** Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—

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- (a) in a case in which 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**

**113.**—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to a jobseeker's allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to or increasing the amount of income support, except—

- (a) where that capital is derived from a payment made in consequence of a personal injury and is placed on trust for the benefit of the claimant; or
- (b) to the extent that the capital he is treated as possessing is reduced in accordance with regulation 114 (diminishing notional capital rule); <sup>[F96]</sup>or
- (c) any sum to which paragraph 42(a) or 43(a) of Schedule 8 (disregard of compensation for personal injuries which is administered by the Court) refers].

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) any loan which would be obtainable only if secured against capital disregarded under Schedule 8; or
- (d) a personal pension scheme; <sup>[F97]</sup>or
- (e) any sum to which paragraph 42(a) or 43(a) of Schedule 8 (disregard of compensation for personal injuries which is administered by the Court) refers],

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) <sup>[F98]</sup>Any payment of capital, other than a payment of capital specified in paragraph (3A)] made—

- (a) to a third party in respect of a single claimant or in respect of a member of the family shall be treated—

<sup>[F99]</sup>(ia) in a case where that payment is a payment of an occupational pension or is a pension or other periodical payment made under a personal pension scheme, as possessed by that single claimant or, as the case may be, by that member;]

- (i) in a case where that payment is derived from a payment of any benefit under the Act or under the Benefits Act, a war disablement pension or war widow's pension <sup>[F100]</sup>or war widower's pension], as possessed by that single claimant, if it would normally be paid to him, or as possessed by that member of the family, if it would normally be paid to that member;
- (ii) in any other case, as possessed by that single claimant or by that member of the family to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent for which housing benefit <sup>[F101]</sup>is payable] or any housing costs to the extent

- that they are met under regulation 83(f)<sup>F102</sup>, 84(1)(g), 86A(d) or 86B(e)<sup>F103</sup>..., of that single claimant or, as the case may be, of any member of the family, or is used for any council tax or water charges for which that claimant or member is liable;
- (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 the 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 by or on behalf of any member of the family.
- <sup>F104</sup>(3A) Paragraph (3) shall not apply in respect of a payment of capital made—
- (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Fund, the Eileen Trust or the Independent Living Funds; or
- (b) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation—
- (i) in an employment programme specified in regulation 75(1)(a)(ii);
- (ii) in a training scheme specified in regulation 75(1)(b)(ii); or
- [ in the Intensive Activity Period for 50 plus or in the Intensive Activity Period <sup>F105</sup>(ii) specified in regulation 75(1)(a)(iv); or]
- (iii) in a qualifying course within the meaning specified in regulation 17A(7).]
- <sup>F106</sup>(c) under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where—
- (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980;
- (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.]
- (4) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or a partner in the business of that company, he shall 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 108 (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 any capital under any of paragraphs (1) to (4) the foregoing provisions of this Chapter shall apply for the purposes of calculating the amount of that capital as if it were actual capital which he does possess.
- (7) For the avoidance of doubt a claimant is to be treated as possessing capital under paragraph (1) only if the capital of which he has deprived himself is actual capital.

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(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.

#### Textual Amendments

- F96** Reg. 113(1)(c) added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income-related Benefits and Jobseekers Allowance \(Amendment\) \(No. 2\) Regulations 1997 \(S.I. 1997/2197\)](#), regs. 1(2), **6**
- F97** Reg. 113(2)(e) added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income-related Benefits and Jobseekers Allowance \(Amendment\) \(No. 2\) Regulations 1997 \(S.I. 1997/2197\)](#), regs. 1(2), **6**
- F98** Words in reg. 113(3) substituted (24.9.1998) by [The Social Security Amendment \(New Deal\) \(No.2\) Regulations 1998 \(S.I. 1998/2117\)](#), regs. 1(1), **3(1)(a)**
- F99** Reg. 113(3)(a)(ia) inserted (15.11.1999) by [The Social Security Amendment \(Notional Income and Capital\) Regulations 1999 \(S.I. 1999/2640\)](#), regs. 1(1), **2(1)(b)**
- F100** Words in reg. 113(3)(a)(i) inserted (8.4.2002) by [The Social Security \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/841\)](#), regs. 1(1), **3(3)**
- F101** Words in reg. 113(3)(a)(ii) substituted (8.4.2002) by [The Social Security Amendment \(Residential Care and Nursing Homes\) Regulations 2001 \(S.I. 2001/3767\)](#), **Sch. Pt. 2 para. 11(a)(i)**
- F102** Words in reg. 113(3)(a)(ii) substituted (19.3.2001) by [The Jobseeker's Allowance \(Joint Claims\) Regulations 2000 \(S.I. 2000/1978\)](#), reg. 1(1), **Sch. 2 para. 44**
- F103** Words in reg. 113(3)(a)(ii) omitted (8.4.2002) by virtue of [The Social Security Amendment \(Residential Care and Nursing Homes\) Regulations 2001 \(S.I. 2001/3767\)](#), **Sch. Pt. 2 para. 11(a)(ii)**
- F104** Reg. 113(3A) inserted (24.9.1998) by [The Social Security Amendment \(New Deal\) \(No.2\) Regulations 1998 \(S.I. 1998/2117\)](#), regs. 1(1), **3(1)(b)**
- F105** Reg. 113(3A)(b)(iia) inserted (9.4.2001) by [The Social Security Amendment \(New Deal\) Regulations 2001 \(S.I. 2001/1029\)](#), regs. 1(1), **8**
- F106** Reg. 113(3A)(c) added (15.11.1999) by [The Social Security Amendment \(Notional Income and Capital\) Regulations 1999 \(S.I. 1999/2640\)](#), regs. 1(1), **2(3)(d)**

#### Modifications etc. (not altering text)

- C6** Reg. 113(3A) modified (temp. from 28.11.2000 until 27.11.2001) by [The Social Security \(New Deal Pilot\) Regulations 2000 \(S.I. 2000/3134\)](#), regs. 1(1)(b), **15(1)**

#### Diminishing notional capital rule

**114.—(1)** Where a claimant is treated as possessing capital under regulation 113(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a week that is subsequent to—
- (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied, or
  - (ii) a week which follows that relevant week and which satisfies those conditions, shall be reduced by an amount determined under paragraph (2);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
- (i) that week is a week subsequent to the relevant week, and
  - (ii) that relevant week is a week in which the condition in paragraph (3) is satisfied, shall be reduced by an amount determined under paragraph (3).

(2) This paragraph applies to a benefit week or part week where the claimant satisfies the conditions that—

- (a) he is in receipt of a jobseeker's allowance; and
- (b) but for regulation 113(1), he would have received an additional amount of jobseeker's allowance in that benefit week or, as the case may be, that part week;

and in such a case, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to that additional amount.

(3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to an income-based jobseeker's allowance in the relevant week but for regulation 113(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

- (a) the amount of jobseeker's allowance to which the claimant would have been entitled in the relevant week but for regulation 113(1); and for the purposes of this sub-paragraph if the relevant week is a part-week that amount shall be determined by dividing the amount of jobseeker's allowance to which he would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
- (b) the amount of housing benefit (if any) equal to the difference between his maximum housing benefit and the amount (if any) of housing benefit which he is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose "benefit week" has the same meaning as in regulation 2(1) of the Housing Benefit (General) Regulations 1987 <sup>F107</sup> (interpretation).
- (c) the amount of council tax benefit (if any) equal to the difference between his maximum council tax benefit and the amount (if any) of council tax benefit which he is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose "benefit week" has the same meaning as in regulation 2(1) of the Council Tax Benefit (General) Regulations 1992 <sup>F108</sup> (interpretation).

(4) The amount determined under paragraph (3) shall be re-determined under that paragraph if the claimant makes a further claim for a jobseeker's allowance and the conditions in paragraph (5) are satisfied, and in such a case—

- (a) sub-paragraphs (a), (b) and (c) of paragraph (3) shall apply as if for the words "relevant week" there were substituted the words "relevant subsequent week"; and
- (b) subject to paragraph (6), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.

(5) The conditions referred to in paragraph (4) are that—

- (a) a further claim is made 26 or more weeks after—
  - (i) the date on which the claimant made a claim for a jobseeker's allowance in respect of which he was first treated as possessing the capital in question under regulation 113(1); or
  - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which he last made a claim for a jobseeker's allowance which resulted in the weekly amount being re-determined; or
  - (iii) the date on which he last ceased to be in receipt of a jobseeker's allowance;whichever last occurred; and

- (b) the claimant would have been entitled to a jobseeker's allowance but for regulation 113(1).

(6) The amount as re-determined pursuant to paragraph (4) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.

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- (7) For the purposes of this regulation—
- (a) “part-week” has the same meaning as in regulation 150(3);
  - (b) “relevant week” means the benefit week or part-week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 113(1)—
    - (i) was first taken into account for the purposes of determining his entitlement to a jobseeker’s allowance or income support; or
    - (ii) was taken into account on a subsequent occasion for the purposes of determining or re-determining his entitlement to a jobseeker’s allowance or income support on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, a jobseeker’s allowance or income support;
 and where more than one benefit week or part-week is identified by reference to heads (i) and (ii) of this sub-paragraph, the later or latest such benefit week or part-week;
  - (c) “relevant subsequent week” means the benefit week or part-week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

#### Textual Amendments

**F107** [S.I. 1987/1971](#).

**F108** [S.I. 1992/1814](#).

#### Capital jointly held

**115.** Except where a claimant possesses capital which is disregarded under regulation 113(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 [<sup>F109</sup>to the whole beneficial interest therein in an equal share 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].

#### Textual Amendments

**F109** Words in reg. 115 substituted (12.10.1998) by [The Social Security Amendment \(Capital\) Regulations 1998 \(S.I. 1998/2250\)](#), regs. 1, **2(1)(2)(f)**

#### Calculation of tariff income from capital

**116.—(1)** [<sup>F110</sup>Except in a case to which paragraph [<sup>F111</sup>(1ZA) or] (1B) applies,] where the claimant’s capital calculated in accordance with this Part exceeds £3,000 it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £3,000 but not exceeding £8,000.

[<sup>F112</sup>(1ZA) Where the claimant—

- (a) is aged 60 or over or has a partner who is aged 60 or over;
- (b) is not a person to whom the circumstances prescribed in paragraph (1B) apply; and
- (c) has capital which, calculated in accordance with this Part, exceeds £6,000,



that capital shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £6,000 but not exceeding £12,000.]

[<sup>F113</sup>(1A) In the case of a claimant to whom paragraph (1B) applies and whose capital calculated in accordance with Chapter VI of Part VIII exceeds £10,000, it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £10,000 but not exceeding £16,000.

(1B) This paragraph applies where the claimant lives permanently in—

- (a) a residential care or nursing home <sup>F114</sup>...and that home <sup>F114</sup>... provides board and personal care for the claimant by reason of his disablement, past or present dependence on alcohol or drugs or past or present mental disorder; or
- (b) an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society; or
- (c) accommodation provided under section 3 of, and Part II of the Schedule to, the Polish Resettlement Act 1947 (provision of accommodation in camps) where the claimant requires personal care [<sup>F115</sup>by reason of old age, disablement, past or present dependence on alcohol or drugs, past or present mental disorder or a terminal illness and the care is provided in the home].

[ residential accommodation.]

<sup>F116</sup>(d)

(1C) For the purpose of paragraph (1B), a claimant shall be treated as living permanently in such home or accommodation where he is absent—

- [<sup>F117</sup>(a) from a home or accommodation referred to in sub-paragraph (a), (b) or (d) of paragraph (1B) for a period not exceeding 13 weeks;]
- (b) from accommodation referred to in sub-paragraph (c) of paragraph (1B), but intends, with the agreement of the manager of the accommodation, to return to the accommodation in due course.]

(2) Notwithstanding [<sup>F118</sup>paragraphs (1)][<sup>F119</sup>(1ZA)] and (1A)], where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly income of £1.

(3) For the purposes of [<sup>F118</sup>paragraphs (1)][<sup>F119</sup>(1ZA)] and (1A)], capital includes any income treated as capital under regulations 110 and 124 (income treated as capital and liable relative payments treated as capital).

[<sup>F120</sup>(4) In its application to this regulation, the definition of “residential accommodation” in regulation 85(4) (special cases) shall have effect as if, after the words “subject to the following provisions of this regulation”, there were inserted the words “(except paragraph (6)).”.]

#### Textual Amendments

- F110** Words in reg. 116(1) inserted (7.10.1996) by [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), regs. 1(1), **12(a)**
- F111** Words in reg. 116(1) inserted (for specified purposes and with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security Amendment \(Capital Limits and Earnings Disregards\) Regulations 2000 \(S.I. 2000/2545\)](#), regs. 1(1)(c), **2(2)(c)(i)**
- F112** [Reg. 116\(1ZA\)](#) inserted (for specified purposes and with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security Amendment \(Capital Limits and Earnings Disregards\) Regulations 2000 \(S.I. 2000/2545\)](#), regs. 1(1)(c), **2(2)(c)(ii)**
- F113** Reg. 116(1A)-(1C) inserted (7.10.1996) by [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), regs. 1(1), **12(b)**

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- F114** Words in reg. 116(1B)(a) omitted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Income-related Benefits and Jobseeker's Allowance \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/65\)](#), reg. 1(1)(2), **8(a)(i)**
- F115** Words in reg. 116(1B)(c) substituted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income-related Benefits and Jobseekers Allowance \(Amendment\) \(No. 2\) Regulations 1997 \(S.I. 1997/2197\)](#), regs. 1(2), **7(5)(6)(b)**
- F116** Reg. 116(1B)(d) inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits and Jobseeker's Allowance \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/65\)](#), reg. 1(1)(2), **8(a)(ii)**
- F117** Reg. 116(1C)(a) substituted (8.4.2002) by [The Social Security Amendment \(Residential Care and Nursing Homes\) Regulations 2001 \(S.I. 2001/3767\)](#), reg. 1, **Sch. Pt. II para. 12**
- F118** Words in reg. 116(2)(3) substituted (7.10.1996) by [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), regs. 1(1), **12(c)**
- F119** Word in reg. 116(2)(3) inserted (for specified purposes and with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security Amendment \(Capital Limits and Earnings Disregards\) Regulations 2000 \(S.I. 2000/2545\)](#), regs. 1(1)(c), **2(2)(c)(iii)**
- F120** Reg. 116(4) added (7.10.1996) by [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), regs. 1(1), **12(d)**

## Chapter VII

### Liable Relatives

#### Interpretation

**117.** In this Chapter, unless the context otherwise requires—

“claimant” includes a young claimant;

“liable relative” means—

- (a) a spouse or former spouse of a claimant or of a member of the claimant's family;
- (b) a parent of a young claimant or of a child or young person who is a member of a claimant's family;
- (c) a person who has not been adjudged to be the father of a young claimant or of a child or young person who is a member of a claimant's family, where that person is contributing to the maintenance of that young claimant, child or young person and by reason of that contribution he may reasonably be treated as the father of that young claimant, child or young person;
- (d) a person liable to maintain another person by virtue of section 78(6)(c) of the Administration Act where the latter is the claimant or a member of the claimant's family, and, in this definition, a reference to a child's, young person's or young claimant's parent includes any person in relation to whom the child, young person or young claimant was treated as a child or a member of the family;

“payment” means a periodical payment or any other payment made by or derived from a liable relative including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by him, but only from the date on which it could be expected to be acquired were an application made; but it does not include any payment—

- (a) arising as a consequence of a disposition of property made in contemplation of, or as a consequence of—
  - (i) an agreement to separate; or

- (ii) any proceedings for judicial separation, divorce or nullity of marriage;
- (b) made after the death of the liable relative;
- (c) made by way of a gift but not in aggregate or otherwise exceeding £250 in the period of 52 weeks beginning with the date on which the payment, or if there is more than one such payment the first payment, is made; and in the case of a claimant who continues to be in receipt of an income-based jobseeker's allowance at the end of the period of 52 weeks, this provision shall continue to apply thereafter with the modification that any subsequent period of 52 weeks shall begin with the first day of the benefit week in which the first payment is made after the end of the previous period of 52 weeks;
- (d) to which regulation 106(2) applies (payments in respect of children and young persons who reside at an educational establishment);
- (e) made—
  - (i) to a third party in respect of the claimant or a member of the claimant's family; or
  - (ii) to the claimant or to a member of the claimant's family in respect of a third party, where having regard to the nature of the payment, the terms under which it is made and its amount, it is unreasonable to take it into account;
- (f) in kind;
- (g) to or in respect of a child or young person who is to be treated as not being a member of the claimant's household under regulation 78;
- (h) which is not a periodical payment, to the extent that any amount of that payment—
  - (i) has already been taken into account under this Part by virtue of a previous claim or determination; or
  - (ii) has been recovered under section 74(1) of the Administration Act (prevention of duplication of payments) or is currently being recovered; or
  - (iii) at the time the determination is made, has been used by the claimant except where he has deprived himself of that amount for the purpose of securing entitlement to a jobseeker's allowance or increasing the amount of that allowance;

"periodical payment" means—

- (a) a payment which is made or is due to be made at regular intervals in pursuance of a court order or agreement for maintenance;
- (b) in a case where the liable relative has established a pattern of making payments at regular intervals, any such payment;
- (c) any payment not exceeding the amount of jobseeker's allowance payable had that payment not been made;
- (d) any payment representing a commutation of payments to which sub-paragraph (a) or (b) of this definition applies whether made in arrears or in advance,

but does not include a payment due to be made before the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, which was not so made;

"young claimant" means a person aged 16 or over but under 19 who makes a claim for a jobseeker's allowance.

### **Treatment of liable relative payments**

**118.** Subject to regulation 119 and except where regulation 124(1) applies (liable relative payments to be treated as capital) a payment shall—

- (a) to the extent that it is not a payment of income, be treated as income;

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- (b) be taken into account in accordance with the following provisions of this Chapter.

### **Disregard of payments treated as not relevant income**

**119.** Where the Secretary of State treats any payment as not being relevant income for the purposes of section 74A of the Administration Act <sup>F121</sup> (payment of benefit where maintenance payments collected by Secretary of State), that payment shall be disregarded in calculating a claimant's income.

#### **Textual Amendments**

**F121** 1992 c.5; section 74A was inserted by the [Child Support Act 1995 \(c.34\)](#).

### **Period over which periodical payments are to be taken into account**

**120.**—(1) The period over which a periodical payment is to be taken into account shall be—

- (a) in a case where the payment is made at regular intervals, a period equal to the length of that interval;
- (b) in a case where the payment is due to be made at regular intervals but is not so made, 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 payment by the weekly amount of that periodical payment as calculated in accordance with regulation 122(4);
- (c) in any other case, a period equal to a week.

(2) The period under paragraph (1) shall begin on the date on which the payment is treated as paid under regulation 123.

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

**121.**—(1) Subject to paragraph (2), the number of weeks over which a payment other than a periodical payment is to be taken into account shall be equal to the number (and any fraction shall be treated as a corresponding fraction of a week) obtained by dividing that payment by—

- (a) where the payment is in respect of the claimant or the claimant and any child or young person who is a member of the claimant's family, the aggregate of £2 and the amount of jobseeker's allowance which would be payable had the payment not been made;
- (b) where the payment is in respect of one, or more than one, child or young person who is a member of the family, the lesser of the amount (or the aggregate of the amounts) prescribed under Schedule 1, in respect of—
  - (i) the personal allowance of the claimant and each such child or young person;
  - (ii) any family <sup>F122</sup>... premium;
  - <sup>F123</sup>(iiia) any enhanced disability premium in respect of such a child or young person;
  - (iii) any disabled child premium in respect of such a child; and
  - (iv) any carer premium but only if that premium is payable because the claimant is in receipt, or is treated as being in receipt, of invalid care allowance by reason of the fact that he is caring for such a child or young person who is severely disabled,
 and the aggregate of £2 and the amount of jobseeker's allowance which would be payable had the payment not been made.

(2) Where a liable relative makes a periodical payment and any other payment concurrently and the weekly amount of that periodical payment, as calculated in accordance with regulation 122 (calculation of the weekly amount of a liable relative payment), is less than—

(a) in a case where the periodical payment is in respect of the claimant or the claimant and any child or young person who is a member of the claimant's family, the aggregate of £2 and the amount of jobseeker's allowance which would be payable had the payments not been made; or

(b) in a case where the periodical payment is in respect of one or more than one child or young person who is a member of the family, the aggregate of the amounts prescribed in Schedule 1 in respect of each such child or young person and any family<sup>F124</sup>... premium,

that other payment shall, subject to paragraph (3), 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 that payment by an amount equal to the extent of the difference between the amount referred to in sub-paragraph (a) or (b), as the case may be, and the weekly amount of the periodical payment.

(3) If—

(a) the liable relative ceases to make periodical payments, the balance (if any) of the other payment shall be taken into account over the number of weeks equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing that balance by the amount referred to in sub-paragraph (a) or (b), as the case may be, of paragraph (1);

(b) the amount of any subsequent periodical payment varies, the balance (if any) of the other payment 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 that balance by an amount equal to the extent of the difference between the amount referred to in sub-paragraph (a) or (b), as the case may be, of paragraph (2), and the weekly amount of the subsequent periodical payment.

(4) The period under paragraph (1) or (2) shall begin on the date on which the payment is treated as paid under regulation 123, and under paragraph (3) shall begin on the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

#### Textual Amendments

**F122** Words in reg. 121(1)(b)(ii) omitted (with effect in accordance with reg. 1(3) of the amending S.I.) by virtue of [The Child Benefit, Child Support and Social Security \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/1803\)](#), regs. 1(b), **43**

**F123** Reg. 121(1)(b)(iia) inserted (9.4.2001) by [The Social Security Amendment \(Enhanced Disability Premium\) Regulations 2000 \(S.I. 2000/2629\)](#), regs. 1(c), **5(b)**

**F124** Words in reg. 121(2)(b)(ii) omitted (with effect in accordance with reg. 1(3) of the amending S.I.) by virtue of [The Child Benefit, Child Support and Social Security \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/1803\)](#), regs. 1(b), **43**

#### Calculation of the weekly amount of a liable relative payment

**122.**—(1) Where a periodical payment is made or is due to be made at intervals of one week, the weekly amount shall be the amount of that payment.

(2) Where a periodical payment is made or is due to be made at intervals greater than one week and those intervals are monthly, the weekly amount shall be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

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(3) Where a periodical payment is made or is due to be made at intervals and those intervals are neither weekly or monthly, the weekly amount shall be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(4) Where a payment is made and that payment represents a commutation of periodical payments whether in arrears or in advance, the weekly amount shall be the weekly amount of the individual periodical payments so commuted as calculated under paragraphs (1) to (3) as appropriate.

(5) The weekly amount of a payment to which regulation 121 applies (period over which payments other than periodical payments are to be taken into account) shall be equal to the amount of the divisor used in calculating the period over which the payment or, as the case may be, the balance is to be taken into account.

### **Date on which a liable relative payment is to be treated as paid**

**123.**—(1) A periodical payment is to be treated as paid—

- (a) in the case of a payment which is due to be made before the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid unless, having regard to the manner in which jobseeker's allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(2) Subject to paragraph (3), any other payment shall be treated as paid—

- (a) in the case of a payment which is made before the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, on the day in the week in which it is paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is paid unless, having regard to the manner in which jobseeker's allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(3) Any other payment paid on a date which falls within the period in respect of which a previous payment is taken into account, not being a periodical payment, is to be treated as paid on the first day following the end of that period.

### **Liable relative payments to be treated as capital**

**124.**—(1) Subject to paragraph (2), where a liable relative makes a periodical payment concurrently with any other payment, and the weekly amount of the periodical payment as calculated in accordance with regulation 122(1) to (4) (calculation of the weekly amount of a liable relative payment) is equal to or greater than the amount referred to in sub-paragraph (a) of regulation 121(2) (period over which payments other than periodical payments are to be taken into account), less the £2 referred to therein, or sub-paragraph (b) of that regulation, as the case may be, 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 under paragraph (1) of regulation 121 but, notwithstanding paragraph (4) thereof, the period over which the payment is to be taken into account shall begin on the first day of the benefit week following the last one in which a periodical payment was taken into account.

## Chapter VIII

### Child Support

#### Interpretation

125. In this Chapter—

“child support maintenance” means such periodical payments as are referred to in section 3(6) of the Child Support Act 1991 <sup>F125</sup>[<sup>F126</sup>and shall include any payments made by the Secretary of State in lieu of such payments];

“maintenance [<sup>F127</sup>calculation]” has the same meaning as in the Child Support Act 1991 by virtue of section 54 of that Act.

#### Textual Amendments

**F125** 1991 c.48.

**F126** Words in [reg. 125](#) added (3.3.2003 for specified purposes) by [The Social Security \(Child Maintenance Premium and Miscellaneous Amendments\) Regulations 2000 \(S.I. 2000/3176\)](#), [reg. 2\(2\)\(a\)](#)

**F127** Word in [reg. 125](#) substituted (3.3.2003 for specified purposes) by [The Child Support \(Consequential Amendments and Transitional Provisions\) Regulations 2001 \(S.I. 2001/158\)](#), [regs. 1\(3\), 7\(2\)](#) (with [reg. 10](#)); [S.I. 2003/192](#), [art. 3\(1\)](#), [Sch.](#)

#### Treatment of child support maintenance

126. Subject to regulation 127, all payments of child support maintenance shall to the extent that they are not payments of income be treated as income and shall be taken into account on a weekly basis in accordance with the following provisions of this Chapter.

#### Disregard of payments treated as not relevant income

127. Where the Secretary of State treats any payment of child support maintenance as not being relevant income for the purposes of section 74A of the Administration Act <sup>F128</sup> (payment of benefit where maintenance payments collected by Secretary of State), that payment shall be disregarded in calculating a claimant's income.

#### Textual Amendments

**F128** 1992 c.5; section 74A was inserted by the [Child Support Act 1995 \(c.34\)](#).

#### Calculation of the weekly amount of child support maintenance

128.—(1) The weekly amount of child support maintenance shall be calculated in accordance with the following provisions of this regulation.

(2) Where payments of child support maintenance are made weekly, the weekly amount shall be the amount of that payment.

(3) Where payments of child support maintenance are made monthly, the weekly amount shall be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(4) Where payments of child support are made at intervals and those intervals are not a week or a month, the weekly amount shall be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

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(5) Where a payment is made and that payment represents a commutation of child support maintenance, the weekly amount shall be the weekly amount of the individual child support maintenance payments so commuted as calculated in accordance with paragraphs (2) to (4) as appropriate.

(6) Paragraph (2), (3), or, as the case may be, (4) shall apply to any payments made at the intervals specified in that paragraph whether or not—

- (a) the amount paid is in accordance with the maintenance [<sup>F129</sup>calculation]; and
- (b) the intervals at which the payments are made are in accordance with the intervals specified by the Secretary of State under regulation 4 of the Child Support (Collection and Enforcement) Regulations 1992 <sup>F130</sup>.

#### Textual Amendments

**F129** Word in reg. 128(6)(a) substituted (3.3.2003 for specified purposes) by [The Child Support \(Consequential Amendments and Transitional Provisions\) Regulations 2001 \(S.I. 2001/158\)](#), regs. 1(3), 7(2) (with reg. 10); S.I. 2003/192, art. 3(1), Sch.

**F130** S.I. 1992/1989; relevant amending instrument is S.I. 1995/1045.

#### Date on which child support maintenance is to be treated as paid

**129.**—(1) Subject to paragraph (2), a payment of child support maintenance is to be treated as paid—

- (a) [<sup>F131</sup>subject to sub-paragraph (aa),] in the case of a payment which is due to be made before the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;

[<sup>F132</sup>(aa) in the case of any amount of a payment which represents arrears of maintenance for a week prior to the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, on the day of the week in which it became due which corresponds to the first day of the benefit week;]

- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first day of the first succeeding benefit week in which it is practicable to take it into account.

[<sup>F133</sup>(2) Where a payment to which paragraph (1)(b) refers is made to the Secretary of State and then transmitted to the person entitled to receive it, the payment shall be treated as paid on the first day of the benefit week in which it is transmitted or, where it is not practicable to take it into account in that week, the first day of the first succeeding benefit week in which it is practicable to take the payment into account.]

#### Textual Amendments

**F131** Words in reg. 129(1)(a) inserted (28.10.1996) by [The Social Security and Child Support \(Jobseeker's Allowance\) \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/2538\)](#), regs. 1, 2(8)(a)

**F132** Reg. 129(1)(aa) inserted (28.10.1996) by [The Social Security and Child Support \(Jobseeker's Allowance\) \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/2538\)](#), regs. 1, 2(8)(b)

**F133** Reg. 129(2) substituted (28.10.1996) by [The Social Security and Child Support \(Jobseeker's Allowance\) \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/2538\)](#), regs. 1, 2(8)(c)



## Chapter IX

### [<sup>F134</sup>Students]

#### Textual Amendments

- F134** Ch. IX, Pt. VIII Title substituted (for specified purposes and with effect in accordance with reg. 1(bi) (bii) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2000 \(S.I. 2000/1922\)](#), regs. 1, **3(3)**

#### Interpretation

**130.** In this Chapter, unless the context otherwise requires—

[<sup>F135</sup>“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively but if students are required to begin attending the course during August or September and to continue attending through the autumn, the academic year of the course shall be considered to begin in the autumn rather than the summer;]

[<sup>F136</sup>“access funds” means—

- (a) grants made under section 7 of the Further and Higher Education Act 1992 and described as “learner support funds” or grants made under section 68 of that Act [<sup>F137</sup>for the purpose of providing funds on a discretionary basis to be paid to students];
- (b) grants made under sections 73(a) and (c) and 74(1) of the Education (Scotland) Act 1980;  
<sup>F138</sup> ...
- (c) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993, or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997 in each case being grants, or grants, loans or other payments as the case may be, made for the purpose of assisting students in financial difficulties]<sup>F139</sup> ...;
- (d) [<sup>F140</sup>discretionary payments, known as “learner support funds”, which are made available to students in further education by institutions out of funds provided by the Learning and Skills Council for England under sections 5, 6 and 9 of the Learning and Skills Act 2000 [<sup>F141</sup>or];]
- (e) [<sup>F141</sup>Financial Contingency Funds made available by the National Assembly for Wales;]

“contribution” means any contribution in respect of the income [<sup>F142</sup>of a student or] of any other person which the Secretary of State<sup>F143</sup>, the Scottish Ministers] or an education authority takes into account in ascertaining the amount of the student’s grant [<sup>F144</sup>or student loan], or any sums, which in determining the amount of a student’s allowance or bursary in Scotland in terms of the Students’ Allowances (Scotland) Regulations 1991<sup>F145</sup> or the Education Authority (Bursaries) (Scotland) Regulations 1995<sup>F146</sup>, the [<sup>F147</sup>Scottish Ministers] or education authority takes into account being sums which the [<sup>F147</sup>Scottish Ministers] or the education authority consider that the holder of the allowance or bursary, the holder’s parents and the holder’s spouse can reasonably be expected to contribute towards the holder’s expenses;

“covenant income” means the income payable to a student under a deed of covenant by a person whose income is, or is likely to be, taken into account in assessing the student’s grant or award;

“education authority” means a government department, a local education authority as defined in section 114(1) of the Education Act 1944<sup>F148</sup>, a local education authority as defined in

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section 123 of the Local Government (Scotland) Act 1973<sup>F149</sup>, an education and library board established under article 3 of the Education and Libraries (Northern Ireland) Order 1986<sup>F150</sup>, any body which is a research council for the purposes of the Science and Technology Act 1965<sup>F151</sup> or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Great Britain;

[<sup>F152</sup>“grant” (except in the definition of “access funds”) means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment from access funds;]

“grant income” means—

- (a) any income by way of a grant;
- (b) in the case of a student other than one to whom sub-paragraph (c) refers, any contribution that has been taken into account whether or not it has been paid;
- (c) in the case of a student who satisfies the additional conditions for a disability premium in paragraph 14 of Schedule 1 (applicable amounts), any contribution which has been taken into account and which has been paid,

and any such contribution which is paid by way of a covenant shall be treated as part of the student’s grant income;

<sup>F153</sup> ...

[<sup>F154</sup>“periods of experience” means periods of work experience which form part of a sandwich course;]

“standard maintenance grant” means—

- (a) except where paragraph (b) or (c) applies, in the case of a student attending [<sup>F155</sup>or undertaking] 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 1995 (“the 1995 regulations”) for such a student;
- (b) except where paragraph (c) applies, in the case of a student residing at his parents’ home, the amount specified in paragraph 3(2) thereof;
- (c) [<sup>F156</sup>in the case of a student receiving an allowance or bursary under the Education (Scotland) Act 1980, the amount of money specified as the “standard maintenance allowance” for the relevant year appropriate for the student set out in the Student Support in Scotland Guide issued by the Student Awards Agency for Scotland, or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority and paid under the Further and Higher Education (Scotland) Act 1992;]
- (d) in any other case, the amount specified in paragraph 2(2) of the 1995 regulations other than in sub-paragraph (a) or (b) thereof;

<sup>F157</sup> ...

[<sup>F158</sup>“student loan” means a loan towards a student’s maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998, section 73 of the Education (Scotland) Act 1980 or Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 [<sup>F159</sup>and shall include, in Scotland, a young student’s bursary paid under regulation 4(1)(c) of the Students’ Allowances (Scotland) Regulations 1999];]

<sup>F160</sup> ...

## Textual Amendments

- F135** Words in reg. 130 inserted (1.8.2001) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2001 (S.I. 2001/2319), regs. 1(1)(a), **2(1)(a)(2)(d)**
- F136** Words in reg. 130 inserted (for specified purposes and with effect in accordance with reg. 1(bi)(bii) of the amending S.I.) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2000 (S.I. 2000/1922), regs. 1, **3(4)**
- F137** Words in reg. 130 substituted (1.8.2001) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2001 (S.I. 2001/2319), regs. 1(1)(a), **2(1)(b)(i)(2)(d)**
- F138** Word in reg. 130 omitted (1.8.2001) by virtue of The Social Security Amendment (Students and Income-related Benefits) Regulations 2001 (S.I. 2001/2319), regs. 1(1)(a), **2(1)(b)(ii)(2)(d)**
- F139** Word in reg. 130 omitted (1.8.2002) by virtue of The Social Security Amendment (Students and Income-related Benefits) Regulations 2002 (S.I. 2002/1589), regs. 1(1)(a), **2(3)(b)(i)**
- F140** Words in reg. 130 inserted (1.8.2001) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2001 (S.I. 2001/2319), regs. 1(1)(a), **2(1)(b)(ii)(2)(d)**
- F141** Words in reg. 130 added (1.8.2002) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2002 (S.I. 2002/1589), regs. 1(1)(a), **2(3)(b)(i)**
- F142** Words in reg. 130 inserted (coming into force in accordance with reg. 1(2)(3)(4)(5)(6) of the amending S.I.) by The Social Security (Miscellaneous Amendments) Regulations 1998 (S.I. 1998/563), regs. 1, **4(1)(2)(f)**
- F143** Words in reg. 130 inserted (1.8.2001) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2001 (S.I. 2001/2319), regs. 1(1)(a), **2(1)(c)(i)(2)(d)**
- F144** Words in reg. 130 inserted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by The Social Security Amendment (Students) Regulations 1999 (S.I. 1999/1935), regs. 1(1)(b), **2(2)(a)**
- F145** S.I. 1991/1522.
- F146** S.I. 1995/1739.
- F147** Words in reg. 130 substituted (1.8.2001) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2001 (S.I. 2001/2319), regs. 1(1)(a), **2(1)(c)(ii)(2)(d)**
- F148** 1944 c.31, as amended by S.I. 1974/595 and 1977/293.
- F149** 1973 c.65.
- F150** S.I. 1986/594 (N.I. 3).
- F151** 1965 c.4.
- F152** Words in reg. 130 substituted (for specified purposes and with effect in accordance with reg. 1(bi)(bii) of the amending S.I.) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2000 (S.I. 2000/1922), regs. 1, **3(4)**
- F153** Words in reg. 130 omitted (31.7.2000) by virtue of The Social Security Amendment (Students) Regulations 2000 (S.I. 2000/1981), regs.1(1), **6(4)(a)**
- F154** Words in reg. 130 substituted (1.8.2002) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2002 (S.I. 2002/1589), regs. 1(1)(a), **2(3)(b)(ii)**
- F155** Words in reg. 130 inserted (31.7.2000) by The Social Security Amendment (Students) Regulations 2000 (S.I. 2000/1981), regs. 1(1), **6(4)(b)**
- F156** Words in reg. 130 substituted (1.8.2001) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2001 (S.I. 2001/2319), regs. 1(1)(a), **2(1)(d)(2)(d)**
- F157** Words in reg. 130 omitted (for specified purposes and with effect in accordance with reg. 1(bi)(bii) of the amending S.I.) by virtue of The Social Security Amendment (Students and Income-related Benefits) Regulations 2000 (S.I. 2000/1922), regs. 1, **3(5)**
- F158** Words in reg. 130 substituted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by The Social Security Amendment (Students) Regulations 1999 (S.I. 1999/1935), regs. 1(1)(b), **2(2)(b)**
- F159** Words in reg. 130 added (1.8.2001) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2001 (S.I. 2001/2319), regs. 1(1)(a), **2(1)(e)(2)(d)**
- F160** Words in reg. 130 omitted (1.8.2001) by virtue of The Social Security Amendment (Students and Income-related Benefits) Regulations 2001 (S.I. 2001/2319), regs. 1(1)(a), **2(1)(f)(2)(d)**

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## Calculation of grant income

131.—(1) The amount of a student's grant income to be taken into account shall, subject to paragraphs [F161(2) and (3)], be the whole of his grant income.

(2) There shall be disregarded from the amount of a student's grant income any payment—

- (a) intended to meet tuition fees or examination fees;
- (b) intended to meet additional expenditure incurred by a disabled student in respect of his attendance on a course;
- (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
- (d) on account of the student maintaining a home at a place other than that at which he resides while attending his course but only to the extent that his rent is not met by housing benefit;
- (e) on account of any other person but only if that person is residing outside the United Kingdom and there is no applicable amount in respect of him;
- (f) intended to meet the cost of books and equipment <sup>F162</sup>... <sup>F163</sup>...
- (g) intended to meet travel expenses incurred as a result of his attendance on the course.

[F164(3) Where a student does not have a student loan and is not treated as possessing such a loan, there shall be excluded from the student's grant income—

- (a) the sum of [F165£265] in respect of travel costs; and
- (b) [F166the sum of [F167£327] towards the costs of books and equipment.]

whether or not any such costs are incurred.]

(3A) [F168There shall also be excluded from a student's grant income—

- [F169(a) any grant of £255 for an only or eldest dependant child payable under regulation 15(1)(c) of the Education (Student Support) Regulations 2002;]
- (b) any grant of [F170£510] in respect of expenditure on travel, books and equipment for the purpose of attending his course which is payable under regulation 15(8) of those Regulations;
- (c) any grant for child care costs payable under regulation 16 of those Regulations [F171or under regulation 16 of the Education (Student Support) Regulations (Northern Ireland) 2001];  
[ the child care component of the National Assembly for Wales Learning Grant;]
- <sup>F172</sup>(cc) (d) any grant in respect of a lone parent's child care costs which is payable under regulation 4(1)(c) of the Students' Allowances (Scotland) Regulations 1999 and which is specified as such on the student's award notice.]

(4) [F173Subject to paragraph (5A), a student's grant income except for any amount intended for the maintenance of dependants under Part III of Schedule 2 to the Education (Mandatory Awards) Regulations 1999, or intended for an older student under Part IV of that Schedule], shall be apportioned—

- (a) subject to paragraph (6), in a case where it is attributable to the period of study, equally between the weeks [F174in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period of study and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study];
- (b) in any other case, equally between the weeks in the period [F175beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the

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period for which it is payable and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period for which it is payable].

(5) [<sup>F176</sup>Any grant paid under section 63(6) of the Health Services and Public Health Act 1968 (grants in respect of the provision of instruction to officers of hospital authorities) and] any amount intended for the maintenance of dependants or for an older student under the provisions referred to in paragraph (4) shall be apportioned equally over a period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53.

[<sup>F177</sup>(5A) [<sup>F178</sup>In a case where a student is in receipt of a student loan or where he could have acquired a student loan by taking reasonable steps but had not done so,] any amount intended for the maintenance of dependants under provisions other than those referred to in paragraphs (4) and (5), shall be apportioned over the same period as the student's loan is apportioned or [<sup>F179</sup>, as the case may be, would have been apportioned].]

(6) 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 [<sup>F180</sup>the weeks in the period beginning with the benefit week, the first day of which immediately follows the last day of the period of experience and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study].

#### Textual Amendments

- F161** Words in reg. 131(1) substituted (for specified purposes and with effect in accordance with reg. 1(bi) (bii) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2000 \(S.I. 2000/1922\)](#), regs. 1, **3(6)(a)**
- F162** Words in reg. 131(2)(f) omitted (7.10.1996) by virtue of [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), reg. 1(1), **Sch. Pt. 2**
- F163** Words in reg. 131(2)(f) omitted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by virtue of [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), regs. 1(1)(b), **2(3)(a)**
- F164** Reg. 131(3) substituted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), regs. 1(1)(b), **2(3)(b)**
- F165** Word in reg. 131(3)(a) substituted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\)](#), regs. 1(1)(b), **3(1)(3)(d)**
- F166** Reg. 131(3)(b) substituted (with effect in accordance with reg. 1(b)(c) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2001 \(S.I. 2001/2319\)](#), regs. 1(1)(b)(c), **3(2)(3)(d)**
- F167** Word in reg. 131(3)(b) substituted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\)](#), regs. 1(1)(b), **3(2)(3)(d)**
- F168** Reg. 131(3A) inserted (with effect in accordance with reg. 1(b)(c) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2001 \(S.I. 2001/2319\)](#), regs. 1(1)(b)(c), **3(4)(d)**
- F169** Reg. 131(3A)(a) substituted (2.9.2002) by [The Social Security Amendment \(Students and Income-related Benefits\) \(No. 2\) Regulations 2002 \(S.I. 2002/2207\)](#), regs. 1, **2(1)(3)(d)**
- F170** Word in reg. 131(3A)(b) substituted (2.9.2002) by [The Social Security Amendment \(Students and Income-related Benefits\) \(No. 2\) Regulations 2002 \(S.I. 2002/2207\)](#), regs. 1, **2(2)(3)(d)**
- F171** Words in reg. 131(3A)(c) added (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\)](#), regs. 1(1)(b), **4(1)(a)(2)(d)**

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- F172** Reg. 131(3A)(cc) inserted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2002 (S.I. 2002/1589), regs. 1(1)(b), **4(1)(b)(2)(d)**
- F173** Words in reg. 131(4) substituted (for specified purposes and with effect in accordance with reg. 1(bi)(bii) of the amending S.I.) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2000 (S.I. 2000/1922), regs. 1, **3(6)(d)**
- F174** Words in reg. 131(4)(a) substituted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2002 (S.I. 2002/1589), regs. 1(1)(b), **4(3)(a)(4)(d)**
- F175** Words in reg. 131(4)(b) substituted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2002 (S.I. 2002/1589), regs. 1(1)(b), **4(3)(b)(4)(d)**
- F176** Words in reg. 131(5) inserted (with effect in accordance with reg. 1(b)(c) of the amending S.I.) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2001 (S.I. 2001/2319), regs. 1(1)(b)(c), **6(d)**
- F177** Reg. 131(5A) inserted (for specified purposes and with effect in accordance with reg. 1(bi)(bii) of the amending S.I.) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2000 (S.I. 2000/1922), regs. 1, **3(6)(e)**
- F178** Words in reg. 131(5A) inserted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2002 (S.I. 2002/1589), regs. 1(1)(b), **4(5)(a)(6)(d)**
- F179** Words in reg. 131(5A) substituted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2002 (S.I. 2002/1589), regs. 1(1)(b), **4(5)(b)(6)(d)**
- F180** Words in reg. 131(6) substituted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by The Social Security Amendment (Students and Income-related Benefits) Regulations 2002 (S.I. 2002/1589), regs. 1(1)(b), **4(7)(8)(d)**

### Calculation of covenant income where a contribution is assessed

**132.**—(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 his covenant income less, subject to paragraph (3), the amount of the contribution.

(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, if there are 53 benefit weeks (including part-weeks) in the year, 53; and
- (b) by disregarding £5 from the resulting amount.

(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 131(2)(g) falls short of the amount for the time being specified in paragraph 7(4)(i) of Schedule 2 to the Education (Mandatory Awards) Regulations 1995 (travel expenditure).

### Covenant income where no grant income or no contribution is assessed

**133.**—(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 131(2)(a) to (e), 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

and there shall be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under regulation 131(2)(f) and (g) and (3) had the student been in receipt of the standard maintenance grant;

- (c) the balance, if any, shall be divided by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53 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 covenant income shall be calculated in accordance with paragraph (1), except that—

- (a) the value of the standard maintenance grant shall be abated by the amount of his grant income less an amount equal to the amount of any sums disregarded under regulation 131(2)(a) to (e); and
- (b) the amount to be disregarded under paragraph (1)(b) shall be abated by an amount equal to the amount of any sums disregarded under regulation 131(2)(f) and (g) and (3).

### Relationship with amounts to be disregarded under Schedule 7

**134.** No part of a student's covenant income or grant income shall be disregarded under paragraph 15 of Schedule 7 (charitable and voluntary payments) and any other income to which sub-paragraph (1) of that paragraph applies shall be disregarded only to the extent that the amount disregarded under regulation 132(2)(b) (calculation of covenant income where a contribution is assessed) or, as the case may be, 133(1)(c) (covenant income where no grant income or no contribution is assessed) is less than £20.

### Other amounts to be disregarded

**135.—(1)** For the purposes of ascertaining income other than grant income, covenant income, and loans treated as income in accordance with regulation 136, any amounts intended for any expenditure specified in regulation 131(2) (calculation of grant income) necessary as a result of the student's 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 131(2) and (3), 132(3) <sup>[F181]</sup>, 133(1)(a) or (b) and 136(5) (calculation of grant income, covenant income and treatment of student loans). ]

(2) Where a claim is made in respect of any period in the normal summer vacation and any income is payable under a deed of covenant which commences or takes effect after the first day of that vacation, that income shall be disregarded.

#### Textual Amendments

**F181** Words in reg. 135(1) substituted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\), regs. 1\(1\)\(b\), 2\(4\)](#)

### Treatment of student loans

<sup>[F182]</sup>**136.—(1)** A student loan shall be treated as income unless it is a hardship loan in which case it shall be disregarded.

(1A) For the purposes of paragraph (1), "hardship loan" means a loan made under regulation 21 of the Education (Student Support) Regulations 2000, regulation 12 of the Education (Student Loans) (Scotland) Regulations 2000 or regulation 21 of the Education (Student Support) Regulations (Northern Ireland) 2000.]

<sup>[F183]</sup>(2) In calculating the weekly amount of the loan to be taken into account as income—

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- (a) [<sup>F184</sup>in respect of a course that is of a single academic year's duration or less, a loan which is payable in respect of that period shall be apportioned equally between the weeks in the period beginning with—
- (i) except in a case where (ii) below applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of the single academic year;
  - (ii) where the student is required to start attending the course in August or where the course is of less than an academic year's duration, the benefit week, the first day of which coincides with, or immediately follows, the first day of the course,
- and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;]
- (aa) [<sup>F185</sup>in respect of an academic year of a course which starts other than on 1st September, a loan which is payable in respect of that academic year shall be apportioned equally between the weeks in the period beginning with the benefit week [<sup>F186</sup>, the first day of which coincides with, or immediately follows, the first day of that academic year and ending with the benefit week, the last day of which coincides with, or immediately precedes,] the last day of that academic year but excluding any benefit weeks falling entirely within the quarter during which, in the opinion of the Secretary of State, the longest of any vacation is taken and for the purposes of this sub-paragraph, "quarter" shall have the same meaning as for the purposes of the Education (Student Support) Regulations 2001;]
- (b) in respect of the final academic year of a course (not being a course of a single year's duration), a loan which is payable in respect of that final academic year shall be apportioned equally between the weeks in the period beginning with <sup>F187</sup>...—
- (i) [<sup>F188</sup>except in a case where (ii) below applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of that academic year;]
  - (ii) [<sup>F188</sup>where the final academic year starts on 1st September, the benefit week, the first day of which coincides with, or immediately follows, the earlier of 1st September or the first day of the autumn term;]
- and ending with [<sup>F189</sup>the benefit week, the last day of which coincides with, or immediately precedes,] the last day of the course;
- (c) in any other case, the loan shall be apportioned equally between the weeks in the period beginning with the earlier of—
- (i) the first day of the first benefit week in September; or
  - (ii) [<sup>F190</sup>the benefit week, the first day of which coincides with, or immediately follows, the first day of the autumn term,]
- and ending with [<sup>F191</sup>the benefit week, the last day of which coincides with, or immediately precedes, the last day of June],
- and, in all cases, from the weekly amount so apportioned there shall be disregarded £10.]
- [<sup>F192</sup>(3) A student shall be treated as possessing a student loan in respect of an academic year where—
- (a) a student loan has been made to him in respect of that year; or
  - (b) he could acquire such a loan in respect of that year by taking reasonable steps to do so.
- (4) Where a student is treated as possessing a student loan under paragraph (3), the amount of the student loan to be taken into account as income shall be, subject to paragraph (5)—



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- (a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to the maximum student loan he is able to acquire in respect of that year by taking reasonable steps to do so and either—
- (i) in the case of a student other than one to whom head (ii) refers, any contribution whether or not it has been paid to him; or
  - (ii) in the case of a student who satisfies the additional conditions for a disability premium specified in paragraph 14 of Schedule 1 (applicable amounts), any contribution which has actually been paid to him;
- (b) in the case of a student to whom a student loan is not made in respect of an academic year, the maximum student loan that would be made to the student if—
- (i) he took all reasonable steps to obtain the maximum student loan he is able to acquire in respect of that year; and
  - (ii) no deduction in that loan was made by virtue of the application of a means test.
- (5) There shall be deducted from the amount of income taken into account under paragraph (4)—
- (a) the sum of [<sup>F193</sup>£265] in respect of travel costs; and
  - (b) the sum of [<sup>F194</sup>£327] towards the costs of books and equipment,
- whether or not any such costs are incurred.]

#### Textual Amendments

- F182** Reg. 136(1)(1A) substituted for reg. 136(1) (for specified purposes and with effect in accordance with reg. 1(bi)(bii) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2000 \(S.I. 2000/1922\), regs. 1, 3\(7\)\(a\)](#)
- F183** Reg. 136(2) substituted (for specified purposes and with effect in accordance with reg. 1(bi)(bii) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2000 \(S.I. 2000/1922\), regs. 1, 3\(7\)\(b\)](#)
- F184** Reg. 136(2)(a) substituted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\), regs. 1\(1\)\(b\), 5\(2\)\(6\)\(d\)](#)
- F185** Reg. 136(2)(aa) inserted (with effect in accordance with reg. 1(b)(c) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2001 \(S.I. 2001/2319\), regs. 1\(1\)\(b\)\(c\), 4](#)
- F186** Words in reg. 136(2)(aa) substituted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\), regs. 1\(1\)\(b\), 5\(3\)\(6\)\(d\)](#)
- F187** Words in reg. 136(2)(b) omitted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by virtue of [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\), regs. 1\(1\)\(b\), 5\(4\)\(a\)\(6\)\(d\)](#)
- F188** Reg. 136(2)(b)(i)(ii) substituted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\), regs. 1\(1\)\(b\), 5\(4\)\(b\)\(6\)\(d\)](#)
- F189** Words in reg. 136(2)(b) substituted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\), regs. 1\(1\)\(b\), 5\(4\)\(c\)\(6\)\(d\)](#)
- F190** Reg. 136(2)(c)(ii) substituted (coming into force in accordance with reg. 1(1)(b)(i) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\), regs. 1\(1\)\(b\), 5\(5\)\(a\)\(6\)\(d\)](#)

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- F191** Words in [reg. 136\(2\)\(c\)](#) substituted (coming into force in accordance with [reg. 1\(1\)\(b\)\(i\)](#) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\)](#), [regs. 1\(1\)\(b\)](#), [5\(5\)\(b\)\(6\)\(d\)](#)
- F192** [Reg. 136\(3\)-\(5\)](#) substituted for [reg. 136\(3\)](#) (with effect in accordance with [reg. 1\(1\)\(b\)](#) of the amending S.I.) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), [regs. 1\(1\)\(b\)](#), [2\(5\)\(b\)](#)
- F193** Word in [reg. 136\(5\)\(a\)](#) substituted (coming into force in accordance with [reg. 1\(1\)\(b\)\(i\)](#) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\)](#), [regs. 1\(1\)\(b\)](#), [3\(1\)\(3\)\(d\)](#)
- F194** Word in [reg. 136\(5\)\(b\)](#) substituted (coming into force in accordance with [reg. 1\(1\)\(b\)\(i\)](#) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2002 \(S.I. 2002/1589\)](#), [regs. 1\(1\)\(b\)](#), [3\(2\)\(3\)\(d\)](#)

### **[<sup>F195</sup>Treatment of payments from access funds**

**136A.**—(1) This regulation applies to payments from access funds that are not payments to which regulation 138(2) or (3) (income treated as capital) applies.

(2) A payment from access funds, other than a payment to which paragraph (3) of this regulation applies, shall be disregarded as income.

(3) Subject to paragraph (4) of this regulation and paragraph 38 of Schedule 7, any payments from access funds which are intended and used for food, ordinary clothing or footwear (which has the same meaning as in paragraph 15(2) of Schedule 7), household fuel, rent for which housing benefit is payable [<sup>F196</sup>or any housing costs] to the extent that they are met under regulation 83(f) or 84(1)(g) (housing costs)<sup>F197</sup> ..., of a single claimant or, as the case may be, of any other member of his family and any payments from access funds which are used for any council tax or water charges for which that claimant or member is liable shall be disregarded as income to the extent of £20 per week.

(4) Where a payment from access funds is made—

- (a) on or after 1st September or the first day of the course, whichever first occurs, but before receipt of any student loan in respect of that year and that payment is intended for the purpose of bridging the period until receipt of the student loan; or
- (b) before the first day of the course to a person in anticipation of that person becoming a student;

that payment shall be disregarded as income.]

#### **Textual Amendments**

- F195** [Reg. 136A](#) inserted (for specified purposes and with effect in accordance with [reg. 1\(bi\)\(bii\)](#) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2000 \(S.I. 2000/1922\)](#), [regs. 1](#), [3\(8\)](#)
- F196** Words in [reg. 136A\(3\)](#) substituted (8.4.2002) by [The Social Security Amendment \(Residential Care and Nursing Homes\) Regulations 2001 \(S.I. 2001/3767\)](#), [reg. 1](#), [Sch. Pt. II para. 13\(a\)](#)
- F197** Words in [reg. 136A\(3\)](#) omitted (8.4.2002) by virtue of [The Social Security Amendment \(Residential Care and Nursing Homes\) Regulations 2001 \(S.I. 2001/3767\)](#), [reg. 1](#), [Sch. Pt. II para. 13\(b\)](#)

### **Disregard of contribution**

**137.** Where the claimant or his partner is a student and, for the purposes of assessing a contribution to the student's grant [<sup>F198</sup>or student loan], the other partner's income has been taken

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into account, an amount equal to that contribution shall be disregarded for the purposes of assessing that other partner's income.

#### Textual Amendments

**F198** Words in reg. 137 inserted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), regs. 1(1)(b), **2(6)**

#### [<sup>F199</sup>Further disregard of student's income

**137A.** Where any part of a student's income has already been taken into account for the purposes of assessing his entitlement to a grant [<sup>F200</sup>or student loan], the amount taken into account shall be disregarded in assessing that student's income.]

#### Textual Amendments

**F199** Reg. 137A inserted (coming into force in accordance with reg. 1(2)(3)(4)(5)(6) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 1998 \(S.I. 1998/563\)](#), regs. 1, **4(3)(4)(f)**

**F200** Words in reg. 137A inserted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), regs. 1(1)(b), 2(7)

#### Income treated as capital

**138.**—[<sup>F201</sup>(1)] Any amount by way of a refund of tax deducted from a student's income shall be treated as capital.

[<sup>F202</sup>(2) An amount paid from access funds as a single lump sum shall be treated as capital.

(3) An amount paid from access funds as a single lump sum which is intended and used for an item other than food, ordinary clothing or footwear (which has the same meaning as in paragraph 15(2) of Schedule 7), household fuel, rent for which housing benefit is payable [<sup>F203</sup>or any housing costs] to the extent that they are met under regulation 83(f) or 84(1)(g) (housing costs)<sup>F204</sup> ..., of a single claimant or, as the case may be, of any other member of his family, or which is used for an item other than any council tax or water charges for which that claimant or member is liable shall be disregarded as capital but only for a period of 52 weeks from the date of the payment.]

#### Textual Amendments

**F201** Reg. 138 renumbered as reg. 138(1) (for specified purposes and with effect in accordance with reg. 1(bi)(bii) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2000 \(S.I. 2000/1922\)](#), regs. 1, **3(9)**

**F202** Reg. 138(2)(3) added (for specified purposes and with effect in accordance with reg. 1(bi)(bii) of the amending S.I.) by [The Social Security Amendment \(Students and Income-related Benefits\) Regulations 2000 \(S.I. 2000/1922\)](#), regs. 1, **3(9)**

**F203** Words in reg. 138(3) substituted (8.4.2002) by [The Social Security Amendment \(Residential Care and Nursing Homes\) Regulations 2001 \(S.I. 2001/3767\)](#), reg. 1, **Sch. Pt. II para. 14(a)**

**F204** Words in reg. 138(3) omitted (8.4.2002) by virtue of [The Social Security Amendment \(Residential Care and Nursing Homes\) Regulations 2001 \(S.I. 2001/3767\)](#), reg. 1, **Sch. Pt. II para. 14(b)**

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### **Disregard of changes occurring during summer vacation**

**139.** In calculating a student's income [<sup>F205</sup>the Secretary of State] 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 up to the end of that vacation.

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#### **Textual Amendments**

**F205** Words in reg. 139 substituted (18.10.1999) by [The Social Security Act 1998 \(Commencement No. 11, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2860\)](#), art. 3(1), [Sch. 12 para. 2](#)

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