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STATUTORY INSTRUMENTS

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**1996 No. 2890**

**HOUSING, ENGLAND AND WALES**

**The Housing Renewal Grants Regulations 1996**

*Made* - - - - 20th November 1996  
*Laid before Parliament* 26th November 1996  
*Coming into force* - - 17th December 1996

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred upon them by sections 3(3) and (4), 30, 31(5) and 146(1) and (2) of the Housing Grants, Construction and Regeneration Act 1996<sup>(1)</sup> and of all other powers enabling them in that behalf, and with the consent of the Treasury, hereby make the following Regulations:—

PART I  
GENERAL

**Citation and commencement**

1. These Regulations may be cited as the Housing Renewal Grants Regulations 1996 and shall come into force on 17th December 1996.

**Interpretation**

2.—(1) In these Regulations,—

“the Act” means the Housing Grants, Construction and Regeneration Act 1996;

“the 1989 Act” means the Local Government and Housing Act 1989<sup>(2)</sup>;

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992<sup>(3)</sup>;

“application”, without more, means an application within section 30(1), other than a landlord’s application for a disabled facilities grant; and “applicant” shall be construed accordingly;

“assessment period” means such period as is prescribed in regulations 20 to 22 over which income falls to be determined;

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(1) 1996 c. 53.  
(2) 1989 c. 42.  
(3) 1992 c. 4.

“attendance allowance” means—

- (a) an attendance allowance under Part III of the 1992 Act;
- (b) an increase of disablement pension under section 104 of that Act;
- (c) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part II of Schedule 8 to that Act (constant attendance allowance);
- (d) an increase of an allowance which is payable in respect of constant attendance under a scheme under, or having effect under, paragraph 4 of Part I of Schedule 8 to that Act<sup>(4)</sup> (industrial diseases benefit schemes);
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983<sup>(5)</sup> or any analogous payment;
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

“charity” has the meaning given by section 96 of the Charities Act 1993<sup>(6)</sup>, and “charitable body” shall be construed accordingly;

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

“child benefit” means child benefit under Part IX of the 1992 Act;

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

“community charge benefits” means community charge benefits under Part VII of the 1992 Act;

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the 1992 Act are charged;

“council tax benefit” means council tax benefit under Part VII of the 1992 Act as amended by the Local Government and Finance Act 1992 (c. 14), section 103 and Schedule 9;

“disability living allowance” means a disability living allowance under Part III of the 1992 Act;

“disability working allowance” means a disability working allowance under section 123 of that Act;

“earnings” has the meaning given by regulation 24 or, as the case may be, 26;

“earnings top-up” means the allowance paid by the Secretary of State under the Earnings Top-up Scheme;

“the Earnings Top-up Scheme” means the Earnings Top-up Scheme 1996<sup>(7)</sup>;

“employed earner” shall be construed in accordance with section 2(1)(a) of the 1992 Act and also includes a person who is in receipt of a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay or statutory maternity pay<sup>(8)</sup>;

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(4) See section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975 (c. 16) which was repealed, with savings, by the Social Security (Consequential Provisions) Act 1992 (c. 6).

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

(6) 1993 c. 10.

(7) This Scheme, which applies only in certain areas of Great Britain, is an extra-statutory Scheme introduced by the Secretary of State for Social Security having effect on 8th October 1996. Copies of the Rules of the Scheme may be obtained from the Customer Services Manager, Earnings Top-up, Norcross, Blackpool FY5 3TA and will be available for inspection at the Department of Social Security, 9th Floor Adelphi, 1–11 John Adam Street, London WC2N 6HT and offices of the Benefits Agency and Employment Job Centres which serve the areas specified in Schedule 1 to the Scheme.

(8) See the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), Parts XI and XII.

“family” means—

- (a) a married or unmarried couple;
- (b) a married or unmarried couple and a member of the same household for whom one of them is or both are responsible and who is a child or a young person;
- (c) a person who is not a member of a married or unmarried couple and a member of the same household for whom that person is responsible and who is a child or a young person;

“the Fund” means moneys made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by him on 24th April 1992, or, or in Scotland, on 10th April 1992;

“health authority” means a health authority under section 8 of the National Health Service Act 1977<sup>(9)</sup>;

“housing benefit” means housing benefit under Part VII of the 1992 Act;

“incapacity benefit” means long-term incapacity benefit or short-term incapacity benefit under Part II of the 1992 Act;

“income-based jobseeker’s allowance” means an income-based jobseeker’s allowance within section 1(4) of the Jobseekers Act 1995<sup>(10)</sup>;

“income-related benefit” means any benefit to which section 123 of the 1992 Act refers;

“income support” means income support under Part VII of that Act;

“the Independent Living (Extension) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“the Independent Living Fund” means the charitable trust established out of funds provided by the Secretary of State for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

“the Independent Living (1993) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“the Independent Living Funds” means the Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1993) Fund;

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

“local authority” and “local housing authority”, in relation to England and Wales, have the same meaning as in the Housing Act 1985; and “local authority”, in relation to Scotland, means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(11)</sup>;

“lone parent” means a person who has no partner and who is responsible for and a member of the same household as a child or young person;

“long-term incapacity benefit” means long-term incapacity benefit under Part II of the 1992 Act;

“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988 by virtue of section 832(1) of that Act<sup>(12)</sup>;

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<sup>(9)</sup> 1977 c. 49; section 8 was substituted by section 1 of the Health Authorities Act 1995 (c. 17).

<sup>(10)</sup> 1995 c. 18.

<sup>(11)</sup> 1994 c. 39.

<sup>(12)</sup> 1988 c. 1; the definition of “lower rate” was added by the Finance Act 1992 (c. 20), section 9.

“the MacFarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

“the MacFarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990, partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;

“the MacFarlane (Special Payments) (No.2) Trust” means the trust of that name, established on 3rd May 1991, partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

“the McFarlane Trusts” means the MacFarlane Trust, the MacFarlane (Special Payments) Trust and the MacFarlane (Special Payments) (No. 2) Trust;

“married couple” means a man and a woman who are married to each other and are members of the same household;

“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Part VIII of the Employment Rights Act 1996<sup>(13)</sup>;

“member of a couple” means a member of a married or unmarried couple;

“mobility supplement” means a supplement to which paragraph 7 of Schedule 3 refers;

“net earnings” means such earnings as are determined in accordance with regulation 25;

“net profit” means such profit as is determined in accordance with regulation 27;

“non-dependant” has the meaning given by regulation 6;

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

“partner” means—

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

“payment” includes part of a payment;

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

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993<sup>(14)</sup> and, in the case of a self-employed earner, includes a scheme approved by the Board of Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988<sup>(15)</sup>;

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

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<sup>(13)</sup> 1996 c. 18.

<sup>(14)</sup> 1993 c. 48.

<sup>(15)</sup> 1988 c. 1.

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

“qualifying person” means a person in respect of whom payment has been made from the Fund;

“rates” means—

- (a) in relation to England and Wales, any amount payable under any of the sections 43, 45 or 54 of the Local Government Finance Act 1988(16) (non-domestic rates) and includes any sum payable on account of any such amount; and
- (b) in relation to Scotland, any amount payable under section 3 of the Abolition of Domestic Rates Etc. (Scotland) Act 1987(17) (non-domestic rates) and includes any sum payable on account of any such amount;

“relevant person” has the meaning given by regulation 5;

“remunerative work” has the meaning given by regulation 7;

“retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;

“self-employed earner” shall be construed in accordance with section 2(1)(b) of the 1992 Act;

“short-term incapacity benefit” means short-term incapacity benefit under Part II of the 1992 Act;

“single person” means a person who neither has a partner nor is a lone parent;

“social fund payment” means a payment pursuant to Part VIII of the 1992 Act;

“student” has the meaning given in regulation 41;

“statutory maternity pay” means statutory maternity pay under Part XII of the 1992 Act;

“statutory sick pay” means statutory sick pay under Part XI of the 1992 Act;

“supplementary benefit” means a supplementary pension or allowance under section 1 or 4 of the Supplementary Benefits Act 1976(18);

“training allowance” has the meaning given by regulation 2(1) of the Housing Benefit (General) Regulations 1987(19);

“unmarried couple” means a man and woman who are not married to each other but are living together as husband and wife;

“voluntary organisation” has the meaning given by section 105(1) of the Children Act 1989(20);

“war disablement pension” and “war widow’s pension” have the meanings respectively given by section 150(2) of the 1992 Act;

“water charges” means—

- (a) in relation to England and Wales, any water and sewerage charges under Chapter I of Part V of the Water Industry Act 1991(21);

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(16) 1988 c. 41; section 43 was amended by paragraph 60 of Schedule 13 to the Local Government Finance Act 1992 (c. 14); section 45 was amended by paragraph 23 of Schedule 5 to the 1989 Act and by paragraph 63 of Schedule 13 to the Local Government Finance Act 1992.

(17) 1987 c. 47.

(18) 1976 c. 71; sections 1 and 4 were repealed by the Social Security Act 1986 (c. 50), section 86(2) and Schedule 11.

(19) S.I. 1987/1971; the definition was inserted by S.I. 1990/546, and amended by S.I. 1991/387 and 1992/432.

(20) 1989 c. 41.

(21) 1991 c. 56.

- (b) in relation to Scotland, any water and sewerage charges under Schedule 5 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987(22), or any water charges under Part I of Schedule 11 to the Local Government Finance Act 1992(23),

in so far as such charges are in respect of the dwelling which a person occupies as his only or main residence;

“year of assessment” has the meaning given by section 832(1) of the Income and Corporation Taxes Act 1988(24);

“young person” means a person, not being a person who is in receipt of income support or a person who is receiving advanced education within the meaning of regulation 12(2) of the Income Support (General) Regulations 1987(25) (relevant education), aged 16 or over but under 19 who is treated as a child for the purposes of section 142 of the 1992 Act (meaning of child).

(2) For the purposes of these Regulations, two persons shall be taken to be estranged only if their estrangement constitutes a breakdown of the relationship between them.

(3) For the purposes of these Regulations, a person is on an income-based jobseeker’s allowance on any day in respect of which an income-based jobseeker’s allowance is payable to him and on any day—

- (a) in respect of which he satisfies the conditions for entitlement to an income; based jobseeker’s allowance but where the allowance is not paid in accordance with section 19 of the Jobseekers Act 1995(26) (circumstances in which a jobseeker’s allowance is not payable); or
- (b) which is a waiting day for the purposes of paragraph 4 of Schedule 1 to that Act and which falls immediately before a day in respect of which an income-based jobseeker’s allowance is payable to him or would be payable to him but for section 19 of that Act.

### **Persons from abroad**

3.—(1) No grant shall be payable under Chapter I of Part I of the Act if the applicant, or any of the applicants, is a person from abroad within the meaning of regulation 7A (persons from abroad) of the Housing Benefit (General) Regulations 1987(27), as those regulations have effect from time to time.

(2) In this regulation, “applicant” means a person who applies, or who joins in an application, for a grant under Chapter I of Part I of the Act.

### **Landlord’s applications: power for local housing authorities to obtain information from pension fund holders**

4. In the case of any application to which section 31 of the Act (determination of amount of grant in case of landlord’s application) applies, a local housing authority may require a pension fund holder to provide the authority with the information specified in paragraph (8) of regulation 31 (details of deferred income under personal pension scheme or retirement annuity contract) for the purpose of determining as described in paragraphs (4) and (5) of that regulation the amount of any income foregone under a personal pension scheme or retirement annuity contract by an applicant, or a partner of an applicant, who is aged not less than 60.

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(22) 1987 c. 47.

(23) 1992 c. 14.

(24) 1988 c. 1; section 832(1) was amended by section 79(1) of and Schedule 6 to the Finance Act 1993 (c. 34).

(25) S.I. 1987/1967; regulation 12 was substituted by regulation 5 of S.I. 1990/547 and amended by S.I. 1992/2155 and 1993/2119.

(26) 1995 c. 18.

(27) S.I. 1987/1971; regulation 7A was inserted by S.I. 1994/470 and amended by S.I. 1994/1807, 1996/30, 1510 and 2432.

## PART II

### MEANS TEST FOR OWNER-OCCUPIER'S AND TENANT'S APPLICATIONS

#### CHAPTER I: GENERAL

##### **Definition of relevant person**

5.—(1) Subject to paragraphs (3) and (4), in respect of any one application, other than an application for a disabled facilities grant, a relevant person is any person who—

- (a) is an applicant, or
- (b) is not an applicant but is entitled to make the application and lives or intends to live in the dwelling or, as the case may be, a flat in the building.

(2) Subject to paragraphs (3) and (4), in respect of any one application for a disabled facilities grant a relevant person is any person who—

- (a) is the disabled occupant, or one of the disabled occupants, of the dwelling or the flat in the building;
- (b) is the partner, or a partner, of the disabled occupant or of one of the disabled occupants;
- (c) where the disabled occupant or any of the disabled occupants is aged less than 18, is responsible for him within the meaning of regulation 8 (circumstances in which a person is to be treated as responsible or not responsible for another).

(3) Where sub-paragraph (a) or (b) of paragraph (1), or any of sub-paragraphs (a), (b) and (c) of paragraph (2), applies to both members of a couple or to more than one member of a polygamous marriage, one member only of that couple or of that polygamous marriage shall be a relevant person in respect of that application.

(4) A young person shall not be a relevant person except where he is the only applicant.

##### **Definition of non-dependant**

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

(2) This paragraph applies to—

- (a) any member of the relevant person's family;
- (b) if the relevant person is polygamously married, any partner of his and any child or young person who is a member of his household and for whom he or one of his partners is responsible;
- (c) a child or young person who is living with the relevant person but who is not a member of his household by virtue of regulation 9 (membership of the same household);
- (d) subject to paragraph (3), a person who jointly occupies the relevant person's dwelling and is either a co-owner of that dwelling with the relevant person or his partner (whether or not there are other co-owners) or is liable with the relevant person or his partner to make payments in respect of his occupation of the dwelling;
- (e) subject to paragraph (3)—

- (i) any person who is liable to make payments on a commercial basis to the relevant person or the relevant person's partner in respect of the occupation of the dwelling,

- (ii) any person to whom or to whose partner the relevant person or the relevant person's partner is liable to make payments on a commercial basis in respect of the occupation of the dwelling, or
  - (iii) any other member of the household of the person to whom or to whose partner the relevant person or the relevant person's partner is liable to make payments on a commercial basis in respect of the occupation of the dwelling;
  - (f) a person who lives with the relevant person in order to care for him or a partner of his and who is engaged by a charitable or voluntary organisation which makes a charge to the relevant person or his partner for the services provided by that person.
- (3) Excepting persons to whom sub-paragraphs (a) to (c) and (f) of paragraph (2) refer, a person shall be a non-dependant if he resides with a relevant person to whom he is liable to make payments in respect of the dwelling and either—
- (a) that relevant person is a close relative of his or his partner, or
  - (b) the tenancy or other agreement between them is other than on a commercial basis.
- (4) For the purposes of this regulation—
- (a) a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area but not if each person is separately liable to make payments in respect of his occupation of the dwelling to the landlord;
  - (b) "communal area" means an area, other than a room or rooms, of common access (including halls and passageways).

### **Remunerative work**

7.—(1) Subject to the following provisions of this regulation, a person shall be treated for the purposes of these Regulations as engaged in remunerative work if he is engaged, or, where his hours of work fluctuate, he is engaged on average for not less than 16 hours a week, in work for which payment is made or which is done in expectation of payment.

(2) Subject to paragraph (3), in determining the number of hours for which a person is engaged in work where his hours of work fluctuate, regard shall be had to the average of hours worked over—

- (a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does not work, those periods but disregarding any other absences);
- (b) in any other case, the period of 5 weeks immediately prior to the date of the application, or such other length of time as may, in the particular case, enable the person's weekly average of hours of work to be determined more accurately.

(3) Where, for the purposes of paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.

(4) Where no recognisable cycle has been established in respect of a person's work, regard shall be had to the number of hours or, where those hours fluctuate, the average of the hours, which he is expected to work in a week.

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



(6) A person in receipt of income support or an income-based jobseeker's allowance for more than 3 days in any period of 7 consecutive days commencing upon a Monday and ending on a Sunday shall be treated as not being in remunerative work in that week.

(7) A person shall not be treated as engaged in remunerative work on any day on which that person is on maternity leave or is absent from work because he is ill.

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

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

(2) Where there is a question as to which person a child or young person is normally living with, the child or young person shall be treated for the purposes of paragraph (1) as normally living with—

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

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

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

9.—(1) Subject to paragraphs (2) to (4), a relevant person and any partner and, where the relevant person or his partner is treated as responsible by virtue of regulation 8 for a child or young person, that child or young person and any child of that child or young person, shall be treated as members of the same household notwithstanding that any of them is temporarily living away from the other members of his family.

(2) Paragraph (1) shall not apply to a person who is living away from the other members of his family where—

- (a) that person does not intend to resume living with the other members of his family; or
- (b) his absence from the other members of his family is likely to exceed 52 weeks, unless there are exceptional circumstances (for example where the person is in hospital or otherwise has no control over the length of his absence) and the absence is unlikely to be substantially more than 52 weeks.

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

- (a) placed with the relevant person or his partner by a local authority under section 23(2)(a) of the Children Act 1989(28) or by a voluntary organisation under section 59(1)(a) of that Act; or
- (b) placed with the relevant person or his partner prior to adoption; or
- (c) placed for adoption with the relevant person or his partner pursuant to a decision under the Adoption Agencies Regulations 1983(29) or the Adoption Agencies (Scotland) Regulations 1984(30).

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(28) 1989 c. 41; section 23 was amended by the Courts and Legal Services Act 1990 (c. 41), section 116 and Schedule 16.

(29) S.I. 1983/1964.

(30) S.I. 1984/988.

(4) Subject to paragraph (5), paragraph (1) shall not apply to a child or young person who is not living with the relevant person and who—

- (a) is being looked after by a local authority under relevant enactment; or
- (b) has been placed with a person other than the relevant person prior to adoption; or
- (c) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations 1983 or the Adoption Agencies (Scotland) Regulations 1984.

(5) A child or young person to whom paragraph (4)(a) applies shall be treated as being a member of the relevant person’s household in any period of 7 consecutive days commencing upon a Monday and ending on a Sunday where—

- (a) that child or young person lives with the relevant person for part or all of that period, and
- (b) it is reasonable to do so taking into account the nature and frequency of that child’s or young person’s visits.

(6) In this regulation “relevant enactment” means the Army Act 1955(31), the Air Force Act 1955(32), the Naval Discipline Act 1957(33), the Adoption Act 1958(34), the Matrimonial Proceedings (Children) Act 1958(35), the Social Work (Scotland) Act 1968(36), the Family Law Reform Act 1969(37), the Children and Young Persons Act 1969(38), the Matrimonial Causes Act 1973(39), the Guardianship Act 1973(40), the Children Act 1975(41), the Domestic Proceedings and Magistrates’ Courts Act 1978(42), the Adoption (Scotland) Act 1978(43), the Child Care Act 1980(44), the Family Law Act 1986(45) and the Children Act 1989(46).

### **The applicable amount**

**10.**—(1) The applicable amount in respect of any one application shall be the aggregate of—

- (a) the total of the weekly applicable amounts of all those persons who are relevant persons in the case of that application, and
- (b) £40.

(2) For the purposes of paragraph (1), the weekly applicable amount—

- (a) as regards a relevant person who is in receipt of income support, is £1;
- (b) as regards any other relevant person, is the amount determined in his case in accordance with regulation 14 (applicable amounts).

### **Financial resources**

**11.** In respect of any one application, the amount which is to be taken to be the financial resources of the applicant or applicants shall be the total of the incomes of all those persons who are relevant

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(31) 1955 c. 18.

(32) 1955 c. 19.

(33) 1957 c. 53.

(34) 1958 c. 5.

(35) 1958 c. 40.

(36) 1968 c. 49.

(37) 1969 c. 46.

(38) 1969 c. 54.

(39) 1973 c. 18.

(40) 1973 c. 29.

(41) 1975 c. 72.

(42) 1978 c. 22.

(43) 1978 c. 28.

(44) 1980 c. 5.

(45) 1986 c. 55.

(46) 1989 c. 41.

persons in the case of that application, and the income of each relevant person shall be determined in accordance with regulation 18 (determination of income on a weekly basis).

## CHAPTER II: REDUCTION IN AMOUNT OF GRANT

### Reduction in amount of grant

**12.**—(1) The amount of any grant which may be paid in respect of an application which is accompanied by owner-occupation certificate shall, if the financial resources of the applicants exceed the applicable amount, be reduced from what it would otherwise have been by an amount equal to the aggregate of the amounts determined—

- (a) by multiplying by 18.46 such part of that excess as is £47.95 or less;
- (b) by multiplying by 36.92 such part of that excess as is greater than £47.95 but not more than £95.89;
- (c) by multiplying by 147.68 such part of that excess as is greater than £95.89 but not more than £191.78; and
- (d) by multiplying by 369.21 such part of that excess as is greater than £191.78.

(2) The amount of any grant which may be paid in respect of an application which is accompanied by a tenant's certificate shall, if the financial resources of the applicant or applicants exceed the applicable amount, be reduced from what it would otherwise have been by an amount equal to the aggregate of the amounts determined—

- (a) by multiplying by 10.77 such part of that excess as is £47.95 or less;
- (b) by multiplying by 21.54 such part of that excess as is greater than £47.95 but not more than £95.89;
- (c) by multiplying by 86.16 such part of that excess as is greater than £95.89 but not more than £191.78; and
- (d) by multiplying by 215.40 such part of that excess as is greater than £191.78.

### Successive applications

**13.**—(1) In this regulation “current application” means an application to which regulation 12 refers.

(2) The amount by which a grant in respect of a current application is reduced shall, except where paragraph (4) applies, be abated—

- (a) in a case to which paragraph (3)(a) or (b) applies, by the amount by which any grant paid in respect of any application there referred to was itself reduced by virtue of regulation 12 and this regulation, regulations 10 and 11 of the Housing Renovation etc. grants (Reduction of Grant) Regulations 1990<sup>(47)</sup> or regulations 10 and 11 of the Housing Renovation etc. Grants (Reduction of Grant) Regulations 1994<sup>(48)</sup>;
- (b) in a case to which paragraph (3)(c) or (d) applies, by the amount by which any grant paid in respect of any application there referred to was itself reduced, by virtue of section 111(4) of the 1989 Act or section 32(4) of the Act (apportionment in tenants' common parts application), by reference to persons (other than participating landlords) who are relevant persons in the current application;

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<sup>(47)</sup> S.I. 1990/1189, amended by S.I. 1991/897, 1992/705, and 1993/551 and revoked by S.I. 1994/648.

<sup>(48)</sup> S.I. 1994/648; regulation 10 was amended by S.I. 1995/838 and 1996/1331, and regulation 11 by 1995/838. S.I. 1994/648 is to be revoked, with savings, by S.I. 1996/2842 (c. 83) with effect from 17th December 1996.

- (c) in a case to which paragraph (3)(e) applies, by the amount of any contribution notified under section 129(1) of the 1989 Act or section 67(1) of the Act (contributions by participants) to any person who is a relevant person in the current application.
- (3) Subject to paragraph (4), this paragraph applies where—
- (a) within the 10 years preceding the date of approval of the current application, at least one application, accompanied by an owner-occupation certificate under section 106(2) of the 1989 Act (certificates for renovation grant or disabled facilities grant applications) or section 8(2) of the Act (renovation grants: certificates required for owner’s application) or an owner’s certificate under section 21(2) of the Act (disabled facilities grant: certificate required for owner’s application), relating to the same dwelling or building was made, in respect of which at least one of the relevant persons is a relevant person in the current application;
  - (b) within the 5 years preceding the date of approval of the current application, at least one application, accompanied by a tenant’s certificate, relating to the same dwelling or building was made, in respect of which at least one of the relevant persons is a relevant person in the current application;
  - (c) within the 10 years preceding the date of approval of the current application, at least one tenants’ common parts application relating to the same building was made, in respect of which at least one of the relevant persons in the current application was an occupying tenant in relation to a flat in the building by virtue of a fixed term tenancy of which not less than five years remained unexpired at the date of the application and was also an applicant;
  - (d) within the 5 years preceding the date of approval of the current application, at least one tenants’ common parts application relating to the same building was made, in respect of which at least one of the relevant persons in the current application was an occupying tenant in relation to a flat in the building by virtue of such an interest as is mentioned in any of paragraphs (c) to (e) of section 105(4) of the 1989 Act, or in any of paragraphs (a) to (d) of section 14(2) of the Act, and was also an applicant; or
  - (e) within the 10 years preceding the date of approval of the current application, at least one of the relevant persons in the current application signified scheme consent under section 129(1) of the 1989 Act, or under section 65(1) of the Act, in respect of at least one group repair scheme in relation to which the same dwelling, building or flat was, or was part of, a qualifying building.
- (4) Paragraph (2) does not apply in any case where, by reason of reduction of grant referred to in paragraph (2)(a) or (b), no grant was paid in respect of the application, except where the eligible works in respect of which the application was approved were executed to a satisfactory standard.

### *CHAPTER III: APPLICABLE AMOUNTS*

#### **Applicable amounts**

- 14.** Subject to regulation 15 (polygamous marriages), the weekly applicable amount of a relevant person shall be the aggregate of such of the following amounts as may apply in his case—
- (a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1(1), (2) or (3), as the case may be, of Schedule 1 (applicable amounts);
  - (b) an amount determined in accordance with paragraph 2 of Schedule 1 in respect of any child or young person who is a member of his family, except a child or young person whose capital, if determined in accordance with Chapter IX of Part II (capital) in like manner as

- for the relevant person, except as provided in regulation 32(5) (modifications in respect of children and young persons), would exceed £5,000;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part II of Schedule 1 (family premium);
  - (d) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

### **Polygamous marriages**

15. Where a relevant person is a member of a polygamous marriage, his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

- (a) the highest amount applicable to him and one of his partners determined in accordance with paragraph 1(3) of Schedule 1 as if he and that partner were a couple;
- (b) an amount equal to the difference between the amounts specified in sub-paragraphs (3)(b) and (1)(b) of paragraph 1 of Schedule 1 in respect of each of his other partners;
- (c) an amount determined in accordance with paragraph 2 of Schedule 1 in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household, except a child or young person whose capital, if determined in accordance with Chapter IX of Part II (capital) in like manner as for the relevant person, except as provided in regulation 32(5) (modifications in respect of children and young persons), would exceed £5,000;
- (d) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part II of Schedule 1 (family premium);
- (e) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

## *CHAPTER IV: INCOME AND CAPITAL: GENERAL*

### **Income and capital of relevant person**

16. Where a relevant person is a member of a family, the income and capital of any member of that family shall, except where otherwise provided, be treated as the income and capital of that person.

### **Determination of income and capital of members of relevant person's family and of a polygamous marriage**

17.—(1) The income and capital of a relevant person's partner and, subject to paragraph (2) and to regulation 32 (modifications in respect of children and young persons), the income of a child or young person which by virtue of regulation 16 is to be treated as income and capital of the relevant person shall be determined in accordance with the following provisions of this Chapter and Chapters V to IX in like manner as for the relevant person; and any reference to the relevant person shall, except where the context otherwise requires, be construed for the purposes of this Chapter and Chapters V to IX as if it were a reference to his partner or that child or young person.

(2) Regulations 25(2) and 27(2), so far as they relate to paragraphs 1 to 12 of Schedule 2 (sums to be disregarded in the determination of earnings), shall not apply to a child or young person.

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

- (a) the relevant person 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 determined in accordance with the following provisions of this Chapter and Chapters V to IX in like manner as for the relevant person or, as the case may be, as for any child or young person who is a member of his family.

## CHAPTER V: INCOME

### Determination of income on a weekly basis

**18.**—(1) The income of a relevant person shall be determined on a weekly basis by aggregating—

- (a) his average weekly earnings from employment as an employed earner, determined in accordance with this Chapter and Chapter VI of this Part,
- (b) his average weekly earnings from employment as a self-employed earner, determined in accordance with this Chapter and Chapter VII of this Part,
- (c) his average weekly income other than earnings, determined in accordance with this Chapter and Chapter VIII of this Part,
- (d) the weekly tariff income determined under regulation 40 (determination of tariff income from capital), and

by then deducting the average weekly relevant child care charge, determined in accordance with regulation 19 (treatment of child care charges), up to a maximum deduction in respect of the relevant person's family of £60 per week.

(2) For the purposes of paragraph (1) "income" includes income to which regulations 30 (annuity treated as income), 31 (notional income), 43 (determination of grant income) and 46 (treatment of student loans) refer.

### Treatment of child care charges

**19.**—(1) This regulation applies where a relevant person has incurred relevant child care charges and—

- (a) is a lone parent and is engaged in remunerative work;
- (b) is a member of a couple both of whom are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other member is incapacitated.

(2) Relevant child care charges shall be determined over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of the charge provided by the child minder or person providing the care.

(3) For the purposes of paragraph (1)(c) the other member of a couple is incapacitated where—

- (a) the relevant person's applicable amount includes—
  - (i) a disability premium; or
  - (ii) a higher pensioner premium by virtue of the satisfaction of paragraph 10(2)(b) of Schedule 1,
 on account of the other member's incapacity;
- (b) the relevant person's applicable amount would include a disability premium or a higher pensioner premium on account of the other member's incapacity, but for that other member

- being treated as capable of work by virtue of a determination made in accordance with regulations(49) made under section 171E of the 1992 Act(50) (incapacity for work: disqualification, etc.);
- (c) the relevant person is or is treated as incapable of work, and has been so incapable or has been so treated as incapable of work in accordance with the provisions of, and regulations made under, Part XIIA of the 1992 Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;
- (d) there is payable in respect of him one or more of the following—
- (i) long-term incapacity benefit, or short-term incapacity benefit at the higher rate, under Schedule 4 to the 1992 Act(51) (rates of benefits, etc.);
  - (ii) attendance allowance under section 64 of that Act (entitlement to an attendance allowance);
  - (iii) severe disablement allowance under section 68 of that Act(52) (severe disablement allowance: entitlement and rate);
  - (iv) disability living allowance under section 71 of that Act (disability living allowance);
- (v) increase of disablement pension under section 104 of that Act (increase where constant attendance needed);
- (vi) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under paragraph (ii), (iv) or (v) above;
- (e) a pension or allowance to which paragraph (ii), (iv), (v) or (vi) of sub-paragraph (d) refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient within the meaning of regulation 18(2) of the Housing Benefit (General) Regulations 1987(53) (patients);
- (f) sub-paragraph (d) or (e) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland(54); or
- (g) he has an invalid carriage or other vehicle provided to him by the Secretary of State under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977(55) (provision of vehicles for those suffering disability) or under section 46 of the National Health Service (Scotland) Act 1978(56) (provision of vehicles for persons suffering from physical defect or disability) or provided by the Department of Health and Social Services for Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972(57) (provision of vehicles for persons suffering from physical defect or disability).
- (4) In this regulation—

(49) S.I. 1995/311.

(50) Section 171E is inserted into the 1992 Act by section 6(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

(51) Paragraph 2 is substituted and paragraph 2A inserted in Schedule 4 by section 2(2) of the Social Security (Incapacity for Work) Act 1994 (c. 18); and Schedule 4 has been further amended by Article 3 of the Social Security Benefits Up-rating Order 1995 (S.I. 1995/559).

(52) Section 68 is amended by section 9 of, and by paragraph 18 of Schedule 1 and by Schedule 2 to, the Social Security (Incapacity for Work) Act 1994.

(53) S.I. 1987/1971.

(54) S.R. (N.I.) 1994 No. 274.

(55) 1977 c. 49; section 5(2) was amended and subsection (2A) inserted by the Public Health Laboratory Service Act 1979 (c. 23), section 1, and subsection (2B) was inserted by section 9 of the Health and Social Security Act 1984 (c. 48).

(56) 1978 c. 29.

(57) S.I. 1972/1265 (N.I. 14).

“Crown property” means property held by Her Majesty in right of the Crown or by a government department or which is held in trust for Her Majesty for the purposes of a government department, except (in the case of an interest held by Her Majesty in right of the Crown) where the interest is under the management of the Crown Estate Commissioners;

“local authority” means, in relation to England and Wales, the council of a county or district, a metropolitan district, a London Borough, the Common Council of the City of London or the Council of the Isles of Scilly or, in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(58)</sup>;

“relevant child care charges” means the charges paid by the relevant person for care provided for any child of the relevant person’s family who is under the age of 11 years, other than charges paid in respect of the child’s compulsory education or charges paid by a relevant person to a partner or by a partner to a relevant person in respect of any child for whom either or any of them is responsible in accordance with regulation 8 (circumstances in which a person is to be treated as responsible or not responsible for another), where the care is provided—

- (a) by persons registered under section 71 of the Children Act 1989<sup>(59)</sup> (registration of child minders and persons providing day care for young children);
- (b) for children aged 8 and over but under 11, out of school hours, by a school on school premises or by a local authority;
- (c) by a child care scheme operating on Crown property where registration under section 71 of the Children Act 1989 is not required; or
- (d) in schools or establishments which are exempted from registration under section 71 of the Children Act 1989 by virtue of section 71(16) of, and paragraph 3 or 4 of Schedule 9 to, that Act,

and shall be determined on a weekly basis in accordance with paragraph (2).

#### **Average weekly earnings of employed earners**

**20.** Where the income of a relevant person consists of or includes earnings from employment as an employed earner, his average weekly earnings from such employment shall be determined by reference to his earnings from such employment over the period of 52 weeks immediately preceding the application or, where his earnings fluctuate, over such other lesser period immediately preceding the application as may enable his average weekly earnings to be determined more accurately.

#### **Average weekly earnings of self-employed earners**

**21.** Where the income of a relevant person consists of or includes earnings from employment as a self-employed earner, his average weekly earnings from such employment shall be determined by reference to his earnings from such employment over the period of 52 weeks immediately preceding the application or, where his earnings from such employment fluctuate, over such other lesser period immediately preceding the application as may enable his average weekly income to be determined more accurately.

#### **Average weekly income other than earnings**

**22.** Any part of a relevant person’s income which does not consist of earnings shall be determined by reference to such income over the period of 52 weeks immediately preceding the application or, where such income fluctuate, over such other lesser period immediately preceding the application as may enable his average weekly income to be determined more accurately.

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(58) 1994 c. 39.

(59) 1989 c. 41.



### **Determination of weekly income**

**23.**—(1) For the purposes of regulations 20 (average weekly earnings of employed earners) and 22 (average weekly income other than earnings), where the period in respect of which a payment is made—

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

(2) For the purposes of regulation 21 (average weekly earnings of self-employed earners) the weekly amount shall be determined by dividing the relevant person's earnings during the assessment period by the number equal to the number of days in the assessment period and multiplying the quotient by 7.

## *CHAPTER VI: EMPLOYED EARNERS*

### **Earnings of employed earners**

**24.**—(1) Subject to paragraph (2), “earnings” means in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a relevant person on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only to the extent that it represents loss of income;
- (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the relevant person'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 employer in respect of—
  - (i) travelling expenses incurred by the relevant person between his home and place of employment,
  - (ii) expenses incurred by the relevant person under arrangements made for the care of a member of his family owing to the relevant person's absence from home;
- (g) any award of compensation made under section 112(1) and (4) or 117(3)(a) of the Employment Rights Act 1996<sup>(60)</sup> (remedies and compensation for unfair dismissal);
- (h) any such sum as is referred to in section 112(3) of the 1992 Act (certain sums to be earnings for social security purposes);
- (i) any statutory sick pay under Part XI of the 1992 Act or statutory maternity pay under Part XII of that Act, or a corresponding payment under any enactment having effect in Northern Ireland;

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<sup>(60)</sup> 1996 c. 18.

- (j) any remuneration paid by or on behalf of an employer to the relevant person who for the time being is on maternity leave or is absent from work because he is ill.
- (2) Earnings shall not include—
  - (a) any payment in kind;
  - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - (c) any occupational pension.

### **Determination of net earnings of employed earners**

**25.**—(1) For the purposes of regulation 20 (average weekly earnings of employed earners), the earnings of a relevant person derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings as determined under paragraph (3).

(2) There shall be disregarded from a relevant person’s net earnings, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 2 (sums to be disregarded in the determination of earnings).

(3) For the purposes of paragraph (1) net earnings shall be determined by taking into account the gross earnings of the relevant person from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax,
  - (ii) primary Class 1 contributions under Part I of the 1992 Act;
- (b) one-half of any sum paid by the relevant person by way of a contribution towards an occupational pension scheme;
- (c) one-half of the amount calculated in accordance with paragraph (4) in respect of any qualifying contribution payable by the relevant person; and
- (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay or statutory maternity pay, any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the 1992 Act.

(4) The amount in respect of any qualifying contribution shall be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying contribution shall be determined—

- (a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;
- (b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.

(5) In this regulation “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.

## *CHAPTER VII: SELF-EMPLOYED EARNERS*

### **Earnings of self-employed earners**

**26.** “Earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and

- (a) shall include any allowance paid under section 2 of the Employment and Training Act 1973(61) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(62) to the relevant person for the purpose of assisting him in carrying on his business, unless at the date of the application the allowance has been terminated; but
- (b) shall not include any payment to which paragraph 23 or 24 of Schedule 3 refers (payments in respect of a person accommodated with the relevant person under arrangements made by a local authority or voluntary organisation and payments made to the relevant person by a health authority, local authority or voluntary organisation in respect of persons temporarily in the relevant person's care).

### **Determination of net profit of self-employed earners**

27.—(1) For the purposes of regulation 21 (average weekly earnings of self-employed earners) the earnings of a relevant person to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975(63), 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 1992 Act determined in accordance with regulation 28 (deduction of tax and contributions for self-employed earners), and
  - (ii) one-half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

(2) There shall be disregarded from a relevant person's net profit, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 2.

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

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax, and
  - (ii) social security contributions payable under the 1992 Act, determined in accordance with regulation 28 (deduction for tax and contributions for self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

(4) For the purposes of paragraph (1)(b) the net profit of the employment shall be determined by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

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(61) 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19), and repealed in part by the Employment Act 1989 (c. 38), section 29 and Schedule 7. Section 2(3A) was inserted in relation to Scotland only by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 47.

(62) 1990 c. 35; section 2 was amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 51 and Schedule 10.

(63) S.I. 1975/529, amended by S.I. 1975/1058, 1984/1303 and 1995/829.

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

- (a) any capital expenditure;
- (b) any depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the assessment period;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment; and
- (g) any debts, except bad debts proved to be such, but this sub-paragraph shall not apply to any expenses incurred in the recovery of a debt.

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

- (a) the replacement in the course of business of equipment or machinery; and
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(7) No deduction shall be made in respect of any expenses under paragraph (3)(a) or (4) where, given the nature and the amount of the expense, it has been unreasonably incurred.

(8) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made under paragraph (3)(a) or (4) in respect of—
  - (i) the excess of any value added tax paid by the relevant person in respect of taxable supplies made to him, over any such tax received by him in respect of taxable supplies made by him, calculated with reference to the assessment period;
  - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
  - (iii) any payment of interest on a loan taken out for the purposes of the employment.

(9) Where a relevant person 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 1992 Act, determined in accordance with regulation 28 (deduction of tax and contributions for self-employed earners); and
- (b) one-half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

(10) For the avoidance of doubt where a relevant person is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed earner or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

(11) In this regulation—

“qualifying premium” means any premium which at the date of the application is payable periodically in respect of a retirement annuity contract or a personal pension scheme.

(12) The amount in respect of any qualifying premium shall be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying premium shall be determined—

- (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365;
- (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.

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

**28.**—(1) The amount to be deducted in respect of income tax under regulation 27(1)(b)(i), (3)(b)(i) or (9)(a)(i) (determination of net profit of self-employed earners) shall be determined 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 or the basic rate and higher rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988(64) (personal reliefs) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate and, if appropriate, the basic rate and the higher 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 27(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under subsection (1) or, as the case may be, subsection (3) of section 11 of the 1992 Act (liability for Class 2 contributions) at the rate applicable at the date of the application except where the relevant person's chargeable income is less than the amount for the time being specified in subsection (4) of that section (small earnings exception) for the tax year in which the date of the application falls; but if the assessment period 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 the application 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 the application falls; but if the assessment period is less than a year, those limits shall be reduced pro rata.
- (3) In this regulation “chargeable income” means—
- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 27;
  - (b) in the case of employment as a child minder, one-third of the earnings of that employment.

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(64) 1988 c. 1; section 257 was substituted by section 33 of the Finance Act 1988 (c. 39) and, as respects the year 1996–97, amended by section 74 of, and paragraph 13 of Schedule 20 and Part V(10) of Schedule 41 to, the Finance Act 1996 (c. 8). Section 259 was amended by sections 30 and 35 of, and paragraphs 1 and 5 of Schedule 3 to, the Finance Act 1988; and, as respects the year 1996–97, by paragraph 17 of Schedule 20 and Part V(10) of Schedule 41 to the Finance Act 1996.

## CHAPTER VIII: OTHER INCOME

### Determination of income other than earnings

**29.**—(1) For the purposes of regulation 22 (average weekly income other than earnings), the income of a relevant person which does not consist of earnings to be taken into account shall, subject to paragraphs (2) and (3), be his gross income and any capital treated as income under regulations 30 (annuity treated as income) or 32 (modifications in respect of children and young persons).

(2) There shall be disregarded from the determination of a relevant person's gross income under paragraph (1) any sum, where applicable, specified in Schedule 3.

(3) Where the payment of any benefit under the 1992 Act is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

(4) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 24(2) applies (payments which are not earnings).

### Annuity treated as income

**30.** Any payment received under an annuity shall be treated as income.

### Notional income

**31.**—(1) A relevant person shall be treated as possessing income of which he has deprived himself for the purpose of increasing the amount of grant.

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) a personal pension scheme or retirement annuity contract where the relevant person is aged under 60,

any income which would have become available to the relevant person upon application for that income being made, but which has not been acquired by him, shall be treated as possessed by the relevant person but only from the date on which it could be expected to have been acquired had an application been made.

(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, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) in the case of a personal pension scheme, 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 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 retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

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 paragraph (3)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined taking account of information provided by the pension fund holder in accordance with paragraph (7).

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

(6) Where a relevant person or any partner is aged not less than 60 and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, he shall where the authority so requires furnish the following information—

- (a) the name and address of the pension fund holder;
- (b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

(7) Where the pension fund holder receives from the authority a request for details concerning a personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (6) refers, the pension fund holder shall provide the authority with any information to which paragraph (8) refers.

(8) The information to which this paragraph refers is—

- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
- (b) in the case of—
  - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
  - (ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,

calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.

(9) Any payment of income, other than a payment of income made under any of the MacFarlane Trusts, the Independent Living Funds or the Fund, made—

- (a) to a third party in respect of a relevant person being a single person or in respect of a member of the family (but not a member of the third party's family), shall be treated as possessed by that single person or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single person or, as the case may be, of any member of that family, or is used for any council tax, personal community charge, collective community charge contribution or water charges for which that relevant person or member is liable;
- (b) to a relevant person being a single person or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single person 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.

(10) Where—

- (a) a relevant person 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;

the relevant person shall be treated as possessing such earnings (if any) as is reasonable for that employment unless the relevant person satisfies the local housing authority that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a relevant person who is engaged by a charitable or voluntary organisation or is a volunteer if it is reasonable for him in any of those cases to provide his services free of charge.

(11) In the case of an application to which section 30(2) of the Act applies (conversion application for renovation grant by owner-occupier), there shall be treated as possessed by the relevant person 90 per cent of the amount of the aggregate of the rents of each of the dwellings to be provided, other than any in respect of which an owner-occupation certificate accompanies the application, which may reasonably be expected to be obtained on a letting on the open market under an assured tenancy and assuming that no premium is paid.

(12) Where a relevant person is treated as possessing any income under any of paragraphs (1) to (9) and (11), the preceding provisions of this Part shall apply for the purposes of determining the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(13) Where a relevant person is treated as possessing any earnings under paragraph (10), the preceding provisions of this Part shall apply for the purposes of determining the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (3) of regulation 25 (determination of net earnings of employed earners) shall not apply and his net earnings shall be determined by taking into account those earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount determined by applying to those earnings the lower rate or, as the case may be, the lower and the basic rate or the basic rate and higher rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988<sup>(65)</sup> (personal reliefs) as is appropriate to his circumstances; but if the assessment period is less than a year the earnings to which the lower rate and, if appropriate, the basic rate and the higher rate of tax is to be applied and the amount of the personal relief deductible under this subparagraph shall be determined on a pro-rate basis;
  - (b) an amount equivalent to the amount of primary Class 1 contributions which would be payable under the 1992 Act in respect of those earnings if—
    - (i) those earnings were actual earnings; and
    - (ii) the rate of any primary percentage (within the meaning of that Act) applicable to those earnings under that Act were the rate applicable at the date of application; and
  - (c) one-half of any sum payable by the relevant person by way of a contribution towards an occupational or personal pension scheme.
- (14) In paragraph (9)—
- (a) the expression “ordinary clothing or footwear” means clothing or footwear for normally daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities; and

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<sup>(65)</sup> 1988 c. 1; section 257 was substituted by section 33 of the Finance Act 1988 (c. 39) and, as respects the year 1996–97, amended by section 74 of, and paragraph 13 of Schedule 20 and Part V(10) of Schedule 41 to, the Finance Act 1996 (c. 8). Section 259 was amended by sections 30 and 35 of, and paragraphs 1 and 5 of Schedule 3 to, the Finance Act 1988; and, as respects the year 1996–97, by paragraph 17 of Schedule 20 and Part V(10) of Schedule 41 to the Finance Act 1996.



- (b) “rent” means eligible rent within the meaning of regulation 10(3) of the Housing Benefit (General) Regulations 1987<sup>(66)</sup> (rent), less any deductions in respect of non-dependants which fall to be made under regulation 63<sup>(67)</sup> (non-dependant deductions) of those Regulations.

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

**32.**—(1) Where the income of a child or young person, except income consisting of any payment of maintenance, whether under a court order or not, determined in accordance with Chapters IV to VIII of this Part exceeds the amount included under Schedule 1 in the determination of the relevant person’s applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any, the excess shall not be treated as income of the relevant person.

(2) Where the capital of a child or young person, if determined in accordance with Chapter IX of this Part in like manner as for the relevant person (except as provided in paragraph (5)) would exceed £5,000, any income of that child or young person, except income consisting of any payment of maintenance whether under a court order or not, shall not be treated as income of the relevant person.

(3) In determining 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 13 and 14) any sum specified in paragraphs 15 and 16 of Schedule 2.

(4) Any income of a child or young person which is to be disregarded under Schedule 3 shall be disregarded in such manner as to produce the result most favourable to the relevant person.

(5) There shall be treated as income any capital of a child or young person payable to him by instalments, one or more of which is outstanding at the date of the application, where the instalment or aggregate of all the instalments outstanding at that date, taken together with the amount of that child’s or young person’s other capital calculated in accordance with Chapter IX of this Part in like manner as for the relevant person, would exceed £5,000.

## *CHAPTER IX: CAPITAL*

### **Determination of capital**

**33.**—(1) The capital of a relevant person to be taken into account shall, subject to paragraph (2), be the whole of his capital determined in accordance with this Part and any income treated as capital under regulation 35 (income treated as capital).

(2) There shall be disregarded from the determination of a relevant person’s capital under paragraph (1) any capital, where applicable, specified in Schedule 4.

### **Disregard of capital of child or young person**

**34.** The capital of a child or young person who is a member of the relevant person’s family shall not be treated as capital of the relevant person.

### **Income treated as capital**

**35.**—(1) Any bounty derived from employment to which paragraph 8 of Schedule 2 applies and paid at intervals of at least one year shall be treated as capital.

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<sup>(66)</sup> S.I. 1987/1971; regulation 10 was amended by S.I. 1988/1971, 1990/546, 1993/317 and 1995/1644 and 2868.

<sup>(67)</sup> Regulation 63 was amended by S.I. 1990/546 and 1775, 1991/235, 387 and 503, 1992/50 and 2148, 1993/317, 963 and 1249, 1994/542 and 1995/559 and 2868.

(2) Any amount by way of a refund of income tax deducted from profits of 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 24(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 3, 5, 8, 14, 25 or 26 of Schedule 4, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the relevant person's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the relevant person's employer shall be treated as capital except insofar as the advance or loan is spent; and thereupon the advance or loan, so far as it is spent, shall not be treated as income.

(6) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment which is made under any of the MacFarlane Trusts, the Independent Living Funds or the Fund, shall be treated as capital.

### **Determination of capital in the United Kingdom**

**36.** Capital which a relevant person possesses in the United Kingdom shall be determined—

- (a) except in a case to which sub-paragraph (b) applies, at its current market or surrender value less—
  - (i) where there would be expenses attributable to sale, 10 per cent., and
  - (ii) the amount of any incumbrance secured on it;
- (b) in the case of a National Savings Certificate—
  - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date of the application, 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.

### **Determination of capital outside the United Kingdom**

**37.** Capital which a relevant person possesses in a country outside the United Kingdom shall be determined—

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer; less, where there would be expenses attributable to sale, 10 per cent. and the amount of any incumbrance secured on it.

### **Notional capital**

**38.—(1)** A relevant person shall be treated as possessing capital of which he has deprived himself for the purpose of increasing the amount of grant.

- (2) Except in the case of—
  - (a) a discretionary trust; or
  - (b) a trust derived from a payment made in consequence of a personal injury; or
  - (c) any loan which would be obtained only if secured against capital disregarded under Schedule 4; or
  - (d) a personal pension scheme or retirement annuity contract,

any capital which would have become available to the relevant person upon application for that income 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 have been acquired had an application been made.

(3) Any payment of capital, other than a payment of capital made under any of the McFarlane Trusts, the Independent Living Funds or the Fund—

- (a) if made to a third party in respect of a single relevant person or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single person or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single person or, as the case may be, of any member of that family, or is used for any council tax, personal community charge, collective community charge contribution or water charges for which that relevant person or member is liable;
- (b) if made to a single relevant person or a member of the family in respect of a third party (but not in respect of another member of that family), shall be treated as possessed by that single person 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.

(4) Where a relevant person stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 33 (determination 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 preceding provisions of this Chapter shall apply for the purposes of determining that amount as if it were actual capital which he does possess.

(5) For so long as the relevant person 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 relevant person is treated as possessing capital under any of paragraphs (1) to (3) the preceding provisions of this Chapter shall apply for the purposes of determining its amount as if it were actual capital which he does possess.

(7) In paragraph (3)—

- (a) 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; and
- (b) “rent” means eligible rent within the meaning of regulation 10(3)(68) (rent) of the Housing Benefit (General) Regulations 1987, less any deductions in respect of non-dependants which fall to be made under regulation 63(69) (non-dependant deductions) of those Regulations.

### **Capital jointly held**

**39.** Except where a relevant person possesses capital which is disregarded under regulation 38(4) (notional capital), where a relevant person and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to an equal share of the whole beneficial interest therein; and the value of that equal share shall

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(68) S.I. 1987/1971; regulation 10 was amended by S.I. 1988/1971, 1990/546, 1993/317 and 1995/1644 and 2868.

(69) Regulation 63 was amended by S.I. 1990/546 and 1775, 1991/235, 387 and 503, 1992/50 and 2148, 1993/317, 963 and 1249, 1994/542 and 1995/559 and 2868.

be calculated by taking the value of the whole beneficial interest calculated in accordance with the foregoing provisions of this Chapter, as though—

- (a) that interest is solely owned by the relevant person; and
- (b) in the case of a dwelling, none of the other joint owners occupies the dwelling concerned,

and dividing the same by the number of persons who have a beneficial interest in the capital in question.

### **Determination of tariff income from capital**

**40.**—(1) Where the relevant person’s capital determined in accordance with this Chapter and Chapters IV to VIII exceeds £5,000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £5,000.

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

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 35 (income treated as capital).

## *CHAPTER X: STUDENTS*

### **Interpretation**

**41.** In this part, unless the context otherwise requires—

“college of further education” means a college of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992<sup>(70)</sup>;

“contribution” means any contribution (including one which is not paid) in respect of the income of any other person which the Secretary of State or an education authority takes into account in ascertaining the amount of the student’s grant; or any sums, which in determining the amount of a student’s allowance or bursary in Scotland under the Further and Higher Education (Scotland) Act 1992, the Secretary of State or the education authority takes into account being sums which the Secretary of State 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;

“course of study” means any course of study, whether or not it is a sandwich course and whether or not a grant is made for undertaking or attending it and for the purposes of this definition a person who has started a course of study shall be treated as attending or undertaking it, as the case may be, until the last day of the course or such earlier date as he abandons it or is dismissed from it;

“education authority” means a government department, a local education authority as defined in section 114(1) of the Education Act 1944<sup>(71)</sup> (interpretation), a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973<sup>(72)</sup>, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986<sup>(73)</sup>, any body which is a research council for the purposes of the Science and Technology Act 1965<sup>(74)</sup> or any analogous government department, authority, board or body of the Channel Islands, Isle of Man or any other country outside Great Britain;

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<sup>(70)</sup> 1992 c. 37.

<sup>(71)</sup> 1944 c. 31, as amended by S.I. 1974/595 article 3(22) Schedule 1 Part 1 and by S.I. 1977/293, article 4(1).

<sup>(72)</sup> 1973 c. 65.

<sup>(73)</sup> S.I. 1986/594 (N.I. 3).

<sup>(74)</sup> 1965 c. 4.

“the FEFC” means the Further Education Funding Council for England or the Further Education Funding Council for Wales;

“full-time student” means a person attending or undertaking a full-time course of study and includes a student on a sandwich course;

“full-time course of study” means a full-time course of study which—

- (a) is not funded in whole or in part by the FEFC or a full-time course of study (not being higher education) which is not funded in whole or in part by the Secretary of State for Scotland at a college of further education;
- (b) is funded in whole or in part by the FEFC and involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out in the case of a course funded by the FEFC for England, in his learning agreement signed on behalf of the establishment which is funded by the FEFC for the delivery of that course or, in the case of a course funded by the FEFC for Wales, in a document signed on behalf of the establishment which is funded by the FEFC for the delivery of that course; or
- (c) is not higher education and is funded in whole or in part by the Secretary of State for Scotland at a college of further education and involves—
  - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
  - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 hours per week, according to the number of hours set out in a document signed on behalf of the college;

“grant” means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment derived from funds made available by the Secretary of State for the purpose of assisting students in financial difficulties under section 100 of the Education Act 1944(75), section 65 of the Further and Higher Education Act 1992(76), section 73 of the Education (Scotland) Act 1980(77) or section 40 of the Further and Higher Education (Scotland) Act 1992(78);

“grant income” means—

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

“higher education” means higher education within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992;

“last day of the course” means the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

“sandwich course” has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1995(79);

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(75) 1944 c. 31; section 100 was amended by the Local Government Act 1958 (c. 55), section 67(a) and Schedule 9; the Education Act 1962 (c. 12), section 13(1) and Schedule 2; S.I. 1964/490, article 3(2)(a); the Education Act 1973 (c. 16), section 1(4) and Schedule 2; the Education Act 1980 (c. 20), section 38(6) and Schedule 7; S.I. 1980/660; and the Education Reform Act 1988 (c. 40), section 213(3).

(76) 1992 c. 13; subsections (4A) and (4B) are inserted into section 65 by the Disability Discrimination Act 1995 (c. 50), section 30(1) and (6).

(77) 1980 c. 44.

(78) 1992 c. 37.

(79) S.I. 1995/3321, amended by S.I. 1996/2088.

“student” means a person, other than a person in receipt of a training allowance, who is attending a course of study at an educational establishment; and a person who has started on such a course shall be treated as attending it, until the last day of the course or such earlier date as he abandons it or is dismissed from it;

“year” in relation to a course means the period of 12 months beginning on 1st January, 1st April or 1st September according to whether the academic year of the course in question begins in the spring, the summer or the autumn respectively.

### **Treatment of students**

**42.** These Regulations shall have effect in relation to students subject to the following provisions of this Chapter.

### **Determination of grant income**

**43.—**(1) The amount of a student’s grant income to be taken into account shall, subject to paragraphs (2) and (3), be the whole of his grant income.

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

- (a) intended to meet tuition fees or examination fees;
- (b) in respect of the student’s disability;
- (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 during his course;
- (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 or, in the case of a full-time student, if not so intended an amount equal to £280 towards such costs;
- (g) intended to meet travel expenses incurred as a result of his attendance on the course.

(3) Where in pursuance of an award a student is in receipt of a grant in respect of maintenance under regulation 17(1)(b) of the Education (Mandatory Awards) Regulations 1995 or a corresponding provision governing the award in question (payments)<sup>(80)</sup> there shall be excluded from his grant income a sum equal to such amount specified in paragraph 7(4) of Schedule 2 to those Regulations (disregard of travel costs) as falls to be disregarded in his case.

### **Relationship with amounts to be disregarded under Schedule 3**

**44.** No part of a student’s grant income shall be disregarded under paragraph 12 of Schedule 3 (sums to be disregarded in the determination of income other than earnings).

### **Other amounts to be disregarded**

**45.** For the purposes of ascertaining income other than grant income and loans treated as income in accordance with regulation 46 (treatment of student loans), any amounts intended for any expenditure specified in regulation 43(2) (determination of grant income), necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary

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<sup>(80)</sup> Recent past corresponding provisions are in S.I. 1994/3044, amended by S.I. 1995/1240; S.I. 1993/2914, amended by S.I. 1994/1606; S.I. 1993/1850, amended by S.I. 1994/1606 and 1993/3183; and S.I. 1992/1270.

expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 43(2) or (3) on like expenditure.

### **Treatment of student loans**

**46.**—(1) A loan which is made to a student pursuant to arrangements made under section 1 of the Education (Student Loans) Act 1990<sup>(81)</sup> or article 3 of the Education (Student Loans) (Northern Ireland) Order 1990<sup>(82)</sup> shall be treated as income.

(2) In calculating the weekly amount of the loan to be taken into account as income, the loan shall be apportioned equally between the weeks in the academic year in respect of which the loan is payable, and from the weekly amount so apportioned there shall be disregarded £10.

(3) For the purposes of this regulation a student shall be treated as possessing the maximum amount of any loan referred to in paragraph (1) which he will be able to acquire in respect of an academic year by taking reasonable steps to do so.

### **Disregard of contribution**

**47.** Where the relevant person or his partner is a student and the income of one is taken into account for the purposes of assessing the amount of the student's grant, an amount equal to the contribution (whether or not the contribution is paid) shall be disregarded in determining the income of the other.

## *CHAPTER XI: MISCELLANEOUS*

### **Application of Regulations**

**48.** These Regulations shall not have effect in relation to applications for grant made before these Regulations came into force.

Signed by authority of the Secretary of State

Department of the Environment  
15th November 1996

*David Curry*  
Minister of State,

18th November 19965

*William Hague*  
Secretary of State for Wales

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<sup>(81)</sup> 1990 c. 6; section 1 was amended by the Further and Higher Education Act 1992 (c. 13), section 93 and Schedule 8.

<sup>(82)</sup> S.I. 1990/1506 (N.I. 11).

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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We consent,

20th November 1996

*Richard Ottway*  
*Roger Knapman*  
Two of the Lords Commissioners of Her  
Majesty's Treasury



## SCHEDULE 1

Regulations 14 and 15

## APPLICABLE AMOUNTS

Regulations 14(a) and (b) and 15(a) to (c)

## PART I

## PERSONAL ALLOWANCES

1. The amounts specified in column (2) below in respect of each person or couple specified in column (1) shall be the amounts specified for the purposes of regulations 14(a) and 15(a) and (b)—

	(1) <i>Person or couple</i>	(2) <i>Amount</i>
(1)	Single person aged— (1) (a) less than 25 (b) not less than 25	(a) £37.90; (b) £47.90.
(2)	Lone parent aged— (2) (a) less than 18 (b) not less than 18	(a) £37.90; (b) £47.90.
(3)	Couple— (3) (a) where both members are aged less than 18 (b) where at least one member is aged not less than 18	(a) £57.20; (b) £75.20.

2. The amounts specified in column (2) below in respect of each person specified in column (1) shall be the amounts specified for the purposes of regulations 14(b) and 15(c)—

	(1) <i>Child or Young Person</i>	(2) <i>Amount</i>
	Person aged— (a) less than 11 (b) not less than 11 but less than 16 (c) not less than 16 but less than 18 (d) not less than 18	(a) £16.45; (b) £24.10; (c) £28.85; (d) £37.90.

Regulations 14(c) and 15(d)

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## PART II

### FAMILY PREMIUM

3. The amount for the purposes of regulations 14(c) and 15(d) in respect of a family of which at least one member is a child or young person shall be £10.55.  
Regulations 14(d) and 15(e)

## PART III

### PREMIUMS

4. Except as provided in paragraph 5, the premiums specified in Part IV of this Schedule shall for the purposes of regulations 14(d) and 15(e) be applicable to a relevant person who satisfies the condition specified in paragraphs 7 to 15 in respect of that premium.

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

6.—(1) The severe disability premium to which paragraph 13 applies may be applicable in addition to any other premium which may apply under this Schedule.

(2) The disabled child premium and the carer premium to which paragraphs 14 and 15 respectively apply may be applicable in addition to any other premium which may apply under this Schedule.

#### **Lone parent premium**

7. The condition is that the relevant person is a lone parent.

#### **Pensioner premium for persons under 75**

8. The condition is that the relevant person—
- (a) is a single person or lone parent aged not less than 60 but less than 75; or
  - (b) has a partner and is, or his partner is, aged not less than 60 but less than 75.

#### **Pensioner premium for persons 75 and over**

9. The condition is that the relevant person—
- (a) is a single person or lone parent aged not less than 75 but less than 80; or
  - (b) has a partner and is, or his partner is, aged not less than 75 but less than 80.

#### **Higher pensioner premium**

- 10.—(1) Where the relevant person is a single person or a lone parent, the condition is that—
- (a) he is aged not less than 80; or
  - (b) he is aged less than 80 but not less than 60, and the additional condition specified in paragraph 12(1)(a) is satisfied.
- (2) Where the relevant person has a partner, the condition is that—
- (a) he or his partner is aged not less than 80; or

- (b) he or his partner is aged less than 80 but not less than 60 and the additional condition specified in paragraph 12(1)(a) is satisfied.

### **Disability premium**

#### **11. The condition is that—**

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

### **Additional condition for the higher pensioner and disability premiums**

**12.—**(1) Subject to sub-paragraph (2) and paragraphs 15 and 16, the additional condition referred to in paragraphs 10 and 11 is that either—

- (a) the relevant person or, as the case may be, his partner—
  - (i) is in receipt of one or more of the following benefits: attendance allowance, disability living allowance, disability working allowance, mobility supplement, long-term incapacity benefit under Part II of the 1992 Act or severe disablement allowance under Part III of that Act but in the case of long-term incapacity benefit or severe disablement allowance only where it is paid in respect of him, or
  - (ii) was in receipt of long-term incapacity benefit under Part II of the 1992 Act when entitlement to that benefit ceased on account of the payment of a retirement pension under that Act and, if the long-term incapacity benefit was payable to his partner, the partner is still a member of the family, or
  - (iii) was in receipt of attendance allowance or disability living allowance but payment of benefit has been suspended in accordance with regulations made under section 113(2) of the 1992 Act or otherwise abated as a consequence of the relevant person or his partner being a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(2) of the Social Security (Hospital In-Patients) Regulations 1975<sup>(83)</sup>, or
  - (iv) is provided by the Secretary of State with an invalid carriage or other vehicle under section 5(2) of the National Health Service Act 1977<sup>(84)</sup> (other services) or, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978<sup>(85)</sup> (provision of services) or receives payments by way of grant from the Secretary of State under paragraph 2 of Schedule 2 to that 1977 Act (additional provisions as to vehicles) or, in Scotland, under that section 46, or
- (v) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948<sup>(86)</sup> (welfare services) or, in Scotland, has

<sup>(83)</sup> S.I. 1975/555; relevant amending instruments are S.I. 1977/1693, 1987/1683 and 1995/829.

<sup>(84)</sup> 1977 c. 49; section 5(2) was amended and subsection (2A) inserted by the Public Health Laboratory Service Act 1979 (c. 23) section 1, and subsection (2B) was inserted by section 9 of the Health and Social Security Act 1984 (c. 48).

<sup>(85)</sup> 1978 c. 29.

<sup>(86)</sup> 1948 c. 29; section 29 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1; the Mental Health (Scotland) Act 1960 (c. 61), sections 113 and 114 and Schedule 4, as retained in force by section 126 of the Mental Health (Scotland) Act 1984 (c. 36); the Local Government Act 1972 (c. 70), sections 195 and 272 and Schedules 23 and 30, paragraph 2; the Employment and Training Act 1973 (c. 50), section 14 and Schedule 3; the Health and Social Services and Social

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been certified as blind and in consequence is registered in a register maintained by or on behalf of a regional or islands council; or

- (b) the relevant person—
- (i) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part XIIA of the 1992 Act<sup>(87)</sup> (incapacity for work), and
  - (ii) has been incapable, or has been treated as incapable, of work for a continuous period of not less than—
    - (aa) in the case of a relevant person who is terminally ill within the meaning of section 30B(4) of the 1992 Act<sup>(88)</sup>, 196 days; and
    - (bb) in any other case, 364 days.

(2) For the purposes of sub-paragraph (1)(a)(v), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

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

(4) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to a person by virtue of his satisfying the additional condition specified in that provision, he shall continue to be treated as satisfying that condition for any period spent by him in undertaking a course of training provided under section 2 of the Employment and Training Act 1973<sup>(89)</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(90)</sup> or for any period during which he is in receipt of a training allowance.

(5) For the purposes of sub-paragraph (1)(b), where two or more periods of incapacity are separated by a break of not more than 56 days, those periods shall be treated as one continuous period.

(6) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the 1992 Act (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to him is or was equal to or greater than the long-term rate.

### Severe disability premium

**13.—**(1) Subject to paragraphs 16 and 17, the condition is that the relevant person is a severely disabled person.

(2) For the purposes of sub-paragraph (1), a relevant person shall be treated as a severely disabled person if, and only if—

- (a) in the case of a single person, a lone parent or a relevant person who is treated as having no partner in consequence of sub-paragraph (3)—

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Security Adjudications Act 1983 (c. 41), section 30 and Schedule 10; and the National Health Service and Community Care Act 1990 (c. 19), section 44(7).

<sup>(87)</sup> Part XIIA is inserted by sections 5 and 6(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

<sup>(88)</sup> Section 30B is inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994.

<sup>(89)</sup> 1973 c. 50; section 2 was substituted by the Employment Act 1988 (c. 19), section 25, and repealed in part by the Employment Act 1989 (c. 38), section 29 and Schedule 7.

<sup>(90)</sup> 1990 c. 35; section 2 was amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 51 and Schedule 10.

- (i) he is in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act, and
  - (iii) subject to sub-paragraph (4), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing, and
  - (iii) an invalid care allowance under section 70 of the 1992 Act is not in payment to anyone in respect of caring for him;
- (b) in the case of a relevant person who has a partner—
- (i) the relevant person is in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act, and
  - (ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, all the partners of that marriage are in receipt of such an allowance, and
  - (iii) subject to sub-paragraph (4), the relevant person has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing, and either an invalid care allowance is payable to someone in respect of caring for only one of a couple or, in the case of a polygamous marriage for one or more but not all the partners of the marriage, or else such an allowance is not in payment to anyone in respect of caring for either member of a couple or any partner of a polygamous marriage.
- (3) Where a relevant person has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of paragraph 12(1)(a)(v) and (2), that partner shall be treated for the purposes of sub-paragraph (2) as if he were not a partner of the relevant person.
- (4) For the purposes of sub-paragraph (2)(b) a person shall be treated as being in receipt of—
- (a) attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act, if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
  - (b) invalid care allowance if he would, but for the person for whom he was caring being a patient for a period exceeding 28 days, be so in receipt.
- (5) For the purposes of sub-paragraphs (2)(a)(ii) and (2)(b)(iii) no account shall be taken of either—
- (a) a person receiving attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act; or
  - (b) a person who is blind or is treated as blind within the meaning of paragraph 12(1)(a)(v) and (2).
- (6) For the purposes of sub-paragraph (2)(a)(iii) and (b), no account shall be taken of an award of invalid care allowance to the extent that payment of such an award is back-dated for a period before the date on which the award is made.

### **Disabled child premium**

**14.**—(1) Subject to paragraphs 16 and 17, the condition is that a child or young person for whom the relevant person or a partner of his is responsible and who is a member of the relevant person's household—

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- (a) has no capital or capital which, if determined in accordance with Chapter IX of Part II (capital) in like manner as for the relevant person except as provided in regulation 32(5) (modifications in respect of children and young persons), would not exceed £5,000; and
- (b) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (c) is blind or treated as blind within the meaning of paragraph 12.

(2) In paragraph (1), “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975<sup>(91)</sup>.

### **Carer premium**

**15.**—(1) The condition is that the relevant person or his partner is, or both of them are, in receipt of invalid care allowance under section 70 of the 1992 Act.

(2) If a relevant person or his partner, or both of them, would be in receipt of invalid care allowance but for the provisions of the Social Security (Overlapping Benefits) Regulations 1979<sup>(92)</sup>, where—

- (a) the claim for that allowance was made on or after 1st May 1991, and
- (b) the person or persons in respect of whose care the allowance has been claimed remains or remain in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act, he or his partner, or both of them, as the case may be, shall be treated for the purposes of sub-paragraph (1) as being in receipt of invalid care allowance.

(3) Where the relevant person or his partner ceases to be in receipt of, or ceases to be treated as being in receipt of, invalid care allowance, the condition mentioned in sub-paragraph (1) shall be treated as satisfied for a period of eight weeks from the date on which he or his partner, as the case may be, was last in receipt of, or was last treated as being in receipt of, invalid care allowance.

### **Persons in receipt of concessionary payments**

**16.** For the purposes of determining whether a premium is applicable to a person under paragraphs 12 to 15, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

### **Persons in receipt of benefit**

**17.** For the purposes of this Part of this Schedule, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.

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<sup>(91)</sup> S.I. 1975/555; relevant amending instruments are S.I. 1977/1693, 1987/1683 and 1995/829.

<sup>(92)</sup> S.I. 1979/597, amended by S.I. 1980/1927, 1982/1173, 1983/186, 1984/1303, 1988/1446, 1991/547, 1991/1617, 1992/589, 1992/3194, 1993/965 and 1995/829.

**PART IV**  
**AMOUNTS OF PREMIUMS SPECIFIED IN PART III**

	<i>Premium</i>	<i>Amount</i>
18.—	(1) Lone parent premium	1. £11.50
	(2) Pensioner premium for persons aged under 75—	
	(a) where the relevant person satisfies the condition in paragraph 8(a);	2. (a) £19.15
	(b) where the relevant person satisfies the condition in paragraph 8(b).	(b) £28.90
	(3) Pensioner premium for persons aged 75 and over—	
	(a) where the relevant person satisfies the condition in paragraph 9(a);	3. (a) £21.30
	(b) where the relevant person satisfies the condition in paragraph 9(b).	(b) £31.90
	(4) Higher pensioner premium—	
	(a) where the relevant person satisfies the condition in paragraph 10(1)(a) or (b);	4. (a) £25.90
	(b) where the relevant person satisfies the condition in paragraph 10(2)(a) or (b).	(b) £37.05
	(5) Disability premium—	
	(a) where the relevant person satisfies the condition in paragraph 11(a);	5. (a) £20.40
	(b) where the relevant person satisfies the condition in paragraph 11(b).	(b) £29.15
	(6) Severe disability premium—	
	(a) where the relevant person satisfies the condition in paragraph 13(2)(a);	6. (a) £36.40
	(b) where the relevant person satisfies the condition in paragraph 13(2)(b)—	

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<i>Premium</i>	<i>Amount</i>
(i) in a case where there is someone in receipt of an invalid care allowance or if he or any partner satisfies that condition only by virtue of paragraph 13(4);	(b)(i) £36.40
(ii) in a case where there is no-one in receipt of such an allowance.	(ii) £72.80
(7) Disabled child premium.	7. £20.40 in respect of each child or young person in respect of whom the condition specified in paragraph 14 is satisfied.
(8) Carer premium.	8. £13.00 in respect of each person who satisfies the condition specified in paragraph 15.

## SCHEDULE 2

Regulations 25(2), 27(2) and 32(3)

## SUMS TO BE DISREGARDED IN THE DETERMINATION OF EARNINGS

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

(a) where—

(i) the employment has been terminated because of retirement, and

(ii) on retirement he is entitled to a retirement pension under the 1992 Act, or is not so entitled solely because of his failure to satisfy the contribution conditions,

any earnings in respect of that employment, but only for a period commencing on the day immediately after the date on which the employment was terminated;

(b) where before the date of the application the employment has been terminated otherwise than because of retirement, any earnings in respect of that employment except earnings to which regulation 24(1)(b) to (e), (g) and (h) (earnings of employed earners) applies;

(c) where at the date of claim—

(i) the employment has not been terminated, but

(ii) the relevant person is not engaged in remunerative work,

any earnings in respect of that employment except earnings to which regulation 24(1)(d), (e), (i) and (j) applies.

2. In the case of a relevant person who, before the date of application—

(a) has been engaged in part-time employment as an employed earner or, where the employment was outside Great Britain, would have been so engaged had the employment been in Great Britain, and



- (b) has ceased to be engaged in that employment, whether or not that employment has been terminated,  
any earnings in respect of that employment except—
  - (i) where that employment has been terminated, earnings to which regulation 24(1)(e) applies;
  - (ii) where that employment has not been terminated, earnings to which regulation 24(1)(e), (i) and (j) applies.

**3.—(1)** In a case to which this paragraph applies, and paragraph 4 does not apply, £15; but notwithstanding regulation 17 (determination of income and capital of members of a relevant person's family and of a polygamous marriage) if this paragraph applies to a relevant person it shall not apply to his partner except where, and to the extent that, the earnings of the relevant person which are to be disregarded under this paragraph are less than £15.

(2) This paragraph applies where the relevant person's applicable amount includes an amount by way of the disability premium or severe disability premium under Schedule 1 (applicable amounts).

(3) This paragraph applies where—

- (a) the relevant person is a member of a couple and his applicable amount would, but for the higher pensioner premium under Schedule 1 being applicable, include an amount by way of the disability premium under that Schedule; and
- (b) he or his partner is under the age of 60 and at least one is engaged in employment.

(4) This paragraph applies where—

- (a) the relevant person's applicable amount includes an amount by way of the higher pensioner premium under Schedule 1; and
- (b) the relevant person or, if he is a member of a couple, either he or his partner has attained the age of 60; and
- (c) immediately before attaining that age he or, as the case may be, he or his partner was engaged in employment and the relevant person would have been entitled by virtue of subparagraph (2) or (3) to a disregard of £15; and
- (d) he or, if he is a member of a couple, he or his partner has continued in employment.

(5) This paragraph applies where—

- (a) the relevant person is a member of a couple and his applicable amount would include an amount by way of the disability premium under Schedule 1, but for—
  - (i) the pensioner premium for persons aged 75 and over under that Schedule being applicable, or
  - (ii) the higher pensioner premium under that Schedule being applicable; and
- (b) he or his partner has attained the age of 75 but is under the age of 80 and the other is under the age of 60 and at least one member of the couple is engaged in employment.

(6) This paragraph applies where—

- (a) the relevant person is a member of a couple and he or his partner has attained the age of 75 but is under the age of 80 and the other has attained the age of 60; and
- (b) immediately before the younger member attained that age either member was engaged in employment and the relevant person would have been entitled by virtue of subparagraph (5) to a disregard of £15; and
- (c) either he or his partner has continued in employment.

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(7) For the purposes of this paragraph, no account shall be taken of any period not exceeding eight consecutive weeks occurring on or after the date on which the relevant person or, if he is a member of a couple, he or his partner attained the age of 60 during which either or both ceased to be engaged in employment.

4. If an amount by way of a lone parent premium under Schedule 1 is or, but for any pensioner premium, higher pensioner premium or disability premium being applicable to him, would be included in the determination of the relevant person's applicable amount, £25.

5.—(1) In a case where neither paragraph 3 nor 4 applies to the relevant person, and subject to sub-paragraph (2), where the relevant person's applicable amount includes an amount by way of carer premium under Schedule 1, £15 of the earnings of the person who is, or at any time in the preceding eight weeks was, in receipt of invalid care allowance or treated in accordance with paragraph 15(2) of that Schedule as being in receipt of invalid care allowance.

(2) Where the carer premium is awarded in respect of the relevant person and of any partner of his, their earnings shall for the purpose of this paragraph be aggregated, but the amount of earnings to be disregarded in accordance with sub-paragraph (1) shall not exceed £15 of the aggregated amount.

6. Where the carer premium is awarded in respect of a relevant person who is a member of a couple and whose earnings are less than £15, but is not awarded in respect of the other member of the couple, and that other member is engaged in an employment—

- (a) specified in paragraph 8(1), so much of the other member's earnings as would not, when aggregated with the amount disregarded under paragraph 5, exceed £15;
- (b) other than an employment specified in paragraph 8(1), so much of the other member's earnings from such other employment up to £10 as would not, when aggregated with the amount disregarded under paragraph 5, exceed £15.

7. In a case where paragraphs 3, 5, 6 and 8 do not apply to the relevant person and he is one of a couple and a member of that couple is in employment, £10; but, notwithstanding regulation 17 (determination of income and capital of members of relevant person's family and of a polygamous marriage), if this paragraph applies to a relevant person it shall not apply to his partner except where, and to the extent that, the earnings of the relevant person which are to be disregarded under this paragraph are less than £10.

8.—(1) In a case to which none of paragraphs 3, 4, 5 or 6 applies to the relevant person, £15 of earnings derived from one or more employments as—

- (a) a part-time fireman in a fire-brigade maintained in pursuance of the Fire Services Acts 1947 to 1959<sup>(93)</sup>;
- (b) an auxiliary coastguard in respect of coast rescue activities;
- (c) a person engaged part-time in the manning or launching of a life-boat;
- (d) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979<sup>(94)</sup>;

but, notwithstanding regulation 17 (determination of income and capital of members of relevant person's family and of a polygamous marriage), if this paragraph applies to a relevant person it shall not apply to his partner except to the extent specified in sub-paragraph (2).

(2) If the relevant person's partner is engaged in an employment—

<sup>(93)</sup> 1947 c. 41, 1951 c. 27, 1959 c. 44.

<sup>(94)</sup> S.I. 1979/591; Part I of Schedule 3 was substituted by S.I. 1980/1975 and amended by S.I. 1994/1553.

- (a) specified in sub-paragraph (1), so much of his earnings as would not, when aggregated with the amount of the relevant person's earnings disregarded under this paragraph, exceed £15;
  - (b) other than one specified in sub-paragraph (1), so much of his earnings from the employment up to £10 as would not, when aggregated with the applicant's earnings disregarded under this paragraph, exceed £15.
9. Where the relevant person is engaged in one or more employments specified in paragraph 8(1), but his earnings derived from such employments are less than £15 in any week and he is also engaged in any other employment, so much of his earnings from that other employment, up to £5 if he is a single person, or up to £10 if he has a partner, as would not, when aggregated with the amount of his earnings disregarded under paragraph 6, exceed £15.
10. In a case to which none of paragraphs 3 to 9 applies, £5.
11. Any amount or the balance of any amount which would fall to be disregarded under paragraph 16 or 17 of Schedule 3 had the relevant person's income which does not consist of earnings been sufficient to entitle him to the full disregard thereunder.
12. Where a relevant person is in receipt of income support or an income-based jobseeker's allowance, his earnings.
13. Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.
14. Where a payment of earnings is made in a currency other than sterling, any banking charges or commission payable in converting that payment into sterling.
15. Any earnings of a child or young person except earnings to which paragraph 16 applies.
16. In the case of earnings of a child or young person who has ceased full-time education for the purposes of section 142 of the 1992 Act (meaning of child) and who is engaged in remunerative work—
- (a) if an amount by way of a disabled child premium under Schedule 1 is included in the determination of his applicable amount, £15;
  - (b) in any other case, £5.
17. In this Schedule "part-time employment" means employment in which the person is engaged on average for less than 16 hours a week.

### SCHEDULE 3

Regulation 29(2)

#### SUMS TO BE DISREGARDED IN THE DETERMINATION OF INCOME OTHER THAN EARNINGS

1. Any amount paid by way of tax on income which is to be taken into account under regulation 29 (determination of income other than earnings).
2. Any payment in respect of any expenses incurred by a relevant person who is—
  - (a) engaged by a charitable or voluntary organisation, or
  - (b) a volunteer,

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 31(4) (notional income).

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

4. Where a relevant person is in receipt of income support or an income-based jobseeker's allowance, the whole of his income.

5. Any disability living allowance.

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

- (a) any payment specified in paragraph 5 or 8;
- (b) income support;
- (c) mobility allowance under section 37A of the Social Security Act 1975(95);
- (d) an income-based jobseeker's allowance.

7. Any mobility supplement under article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(96) (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(97) or any payment intended to compensate for the non-payment of such a supplement.

8. Any attendance allowance.

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

10. Any sum in respect of course of study attended by a child or young person payable by virtue of Regulations made under section 81 of the Education Act 1944(98) (assistance by means of scholarships or otherwise), or by virtue of section 2(1) of the Education Act 1962(99) (awards for courses of further education), or section 49 of the Education (Scotland) Act 1980(100) (power to assist persons to take advantage of educational facilities).

11. In the case of a relevant person attending a course at an employment rehabilitation centre established under section 2 of the Employment and Training Act 1973(101) or participating in arrangements for training made under that section or under section 2 of the Enterprise and New Towns (Scotland) Act 1990(102) —

- (a) any travelling expenses reimbursed to the relevant person;
- (b) if he receives an allowance under section 2(2)(d) of the former Act or under section 2(4)(c) of the latter Act, such amount, if any, of that allowance expressed to be a living away from home allowance;
- (c) any training premium,

but this paragraph, except in so far as it relates to a payment under sub-paragraph (a), (b) or (c), does not apply to any part of any allowance under the said section 2(2)(d) or the said section 2(4)(c).

(95) 1975 c. 14; section 37A was inserted by section 22(1) of the Social Security Pensions Act 1975 (c. 60), and amended by the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 64; the Social Security Act 1979 (c. 18), section 3 and the Social Security Act 1986 (c. 50), sections 71 and 86 and Schedule 11. Section 37A was repealed by the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21), sections 2(3) and 10 and Schedule 4.

(96) S.I. 1983/883; article 26A was added by S.I. 1983/1116 and amended by S.I. 1983/1521, 1986/592, 1990/1308, 1991/766, 1992/710, and 1995/766.

(97) S.I. 1983/686; article 25A was added by S.I. 1983/1164 and amended by S.I. 1983/1540, 1986/628, 1990/1300, 1991/708, 1992/702 and 1995/445.

(98) 1944 c. 31, amended by S.I. 1964/490 and the Education Reform Act 1988 (c. 40), section 237(1), Schedule 12, paragraph 6.

(99) 1962 c. 12; section 2(1) was substituted by section 19 of, and Schedule 5 to, the Education Act 1980 (c. 20).

(100) 1980 c. 44.

(101) 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19), and repealed in part by the Employment Act 1989 (c. 38), section 29 and Schedule 7. Section 2(3A) was inserted in relation to Scotland only by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 47.

(102) 1990 c. 35; section 2 was amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 51 and Schedule 10.

**12.**—(1) Except where sub-paragraph (2) applies and subject to sub-paragraph (3) and paragraphs 31 and 32, £20 of any charitable payment or of any voluntary payment made or due to be made at regular intervals.

(2) Subject to sub-paragraph (3) and paragraph 32, any charitable payment or voluntary payment made or due to be made at regular intervals which is intended and used for an item other than food, ordinary clothing or footwear, household fuel or rent of that single person or, as the case may be, of any member of that family, or is used for any council tax, personal community charge, collective community charge contribution or water charges for which that relevant person or member is liable.

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

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

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

- (a) the expression “ordinary clothing or footwear” has the same meaning as regulation 31(14); and
- (b) “rent” means eligible rent within the meaning of regulation 10(3) of the Housing Benefit (General) Regulations 1987(**103**), less any deductions in respect of non-dependants which fall to be made under regulation 63(**104**) of those Regulations.

**13.** Subject to paragraph 31, £10 of any of the following, namely—

- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 7 or 8);
- (b) a war widow’s pension;
- (c) a pension payable to a person as a widow under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(**105**) insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865(**106**) or the Pensions and Yeomanry Pay Act 1884(**107**), or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(**108**) and any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- (d) a payment made to compensate for the non-payment of such a pension as is mentioned in any of the preceding sub-paragraphs;
- (e) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions mentioned in sub-paragraphs (a) to (c) above;
- (f) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria.

**14.**—(1) Any income derived from capital to which the relevant person is or is treated under regulation 39 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraphs 1, 2, 3, 5, 8, 14, 25 or 26 of Schedule 4.

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(**103**) S.I. 1987/1971. Regulation 10 was amended by S.I. 1988/1971, 1990/546, 1993/317 and 1995/1644 and 2868.

(**104**) Regulation 63 was amended by S.I. 1990/546 and 1775, 1991/235, 387 and 503, 1992/50 and 2148, 1993/317, 963 and 1249, 1994/542 and 1995/559 and 2868.

(**105**) S.I. 1983/883, amended by S.I. 1983/1116, 1521, 1984/1154, 1687, 1985/1201, 1986/592, 1987/165, 1988/248, 2248, 1989/156, 1990/250, 1308, 1991/766, 1992/710, 3208, 1993/598, 1994/772, 1906 and 1995/766.

(**106**) 28 & 29 Vict. c.73.

(**107**) 47 and 48 Vict. c.55.

(**108**) 1977 c. 5.

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(2) Income derived from capital disregarded under paragraphs 3(a), 5, 25 or 26 of Schedule 4 but only to the extent of—

- (a) any mortgage payments or payment of rates made in respect of the dwelling or buildings, or
- (b) any standard community charge, council tax or water charges which the relevant person is liable to pay in respect of the dwelling or building,

in the period during which that income accrued.

(3) The definition of “water charges” in regulation 2(1) shall apply to sub-paragraph (2) of this paragraph in respect of the dwelling or buildings with the omission of the words “in so far as such charges are in respect of the dwelling which a person occupies as his only or main residence.”

**15.** Where a relevant person receives income under an annuity purchased with a loan which satisfies the following conditions—

- (a) that the loan was made as part of a scheme under which not less than 90 per cent. of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in this paragraph referred to as “the annuitants”) who include the person to whom the loan was made;
- (b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;
- (c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;
- (d) that the loan was secured on a dwelling in Great Britain and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling; and
- (e) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid,

the amount, calculated on a weekly basis, equal to—

- (i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988<sup>(109)</sup> (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;
- (ii) in any other case, the interest which is payable on the loan without deduction of such a sum.

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

- (a) under regulations made in exercise of the powers conferred by section 1 of the Education Act 1962<sup>(110)</sup>, that student’s award under that section;
- (b) that student’s award under section 2 of that Act<sup>(110)</sup>; or
- (c) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980<sup>(111)</sup> that student’s bursary, scholarship, or other allowance under

<sup>(109)</sup> 1988 c. 1; section 369(1A) was inserted by section 81(3) of the Finance Act 1994 (c. 9).

<sup>(110)</sup> 1962 c. 12; sections 1 and 2 were substituted by section 19 and Schedule 5 of the Education Act 1980 (c. 20) and section 1(3) amended by section 4 of the Education (Grants and Awards) Act 1984 (c. 11) and *see* the Education (Mandatory Awards) Regulations 1995 (S.I. 1995/3321, as amended by S.I. 1996/2088).

<sup>(110)</sup> 1962 c. 12; sections 1 and 2 were substituted by section 19 and Schedule 5 of the Education Act 1980 (c. 20) and section 1(3) amended by section 4 of the Education (Grants and Awards) Act 1984 (c. 11) and *see* the Education (Mandatory Awards) Regulations 1995 (S.I. 1995/3321, as amended by S.I. 1996/2088).

<sup>(111)</sup> 1980 c. 44 and *see* the Education Authority Bursaries (Scotland) Regulations 1988 (S.I. 1988/1042).

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that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section, an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

**17.**—(1) Where the relevant person is the parent of a student aged under 25 in advanced education who either—

- (a) is not in receipt of any award or grant in respect of that education; or
- (b) is in receipt of an award under section 2 of the Education Act 1962 (discretionary awards) or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

and the relevant person makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 16, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

(2) For the purposes of sub-paragraph (1), the amount shall be equal to—

- (a) the weekly amount of the payments; or
- (b) the amount by way of a personal allowance for a single person under 25 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b),

whichever is less.

**18.** Any payment made to the relevant person by a child or young person or a non-dependent.

**19.** Where the relevant person occupies a dwelling as his only or main residence which is also occupied by a person other than one to whom paragraph 18 or 39 refers and there is a contractual liability to make payments to the relevant person in respect of the occupation of the dwelling by that person or a member of his family—

- (a) £4 of the aggregate of any payments made in any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family; and
- (b) a further £9.25, where the aggregate of any such payments is inclusive of an amount for heating.

**20.** Any income in kind.

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

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

- (a) in accordance with regulations made pursuant to section 57A of the Adoption Act 1976(**112**) (permitted allowances) or with a scheme approved by the Secretary of State under section 51 of the Adoption (Scotland) Act 1978(**113**) (schemes for payments of allowances to adopters);
- (b) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989(**114**) (local authority contribution to a child's maintenance where the child is living with a person as a result of a residence

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(112) 1976 c. 36; section 57A was inserted by paragraph 25 of Schedule 10 to the Children Act 1989.

(113) 1978 c. 28.

(114) 1989 c. 41; section 15(1) was amended by the Courts and Legal Services Act 1990 (c. 41), section 116 and Schedule 16.



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order) or, as the case may be, section 50 of the Children Act 1975(**115**) (payment towards maintenance of children);

to the extent specified in sub-paragraph (2).

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

- (a) to whom regulation 32(2) (capital in excess of £5,000) applies, the whole payment;
- (b) to whom that regulation does not apply, so much of the weekly amount of the payment as exceeds the amount included under Schedule 1 in the determination of the relevant person's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any.

**23.** Any payment made by a local authority to the relevant person with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989 or, as the case may be, section 21 of the Social Work (Scotland) Act 1968(**116**) or by a voluntary organisation under section 59(1)(a) of the Children Act 1989 or by a care authority under regulation 9 of the Boarding-out and Fostering of Children (Scotland) Regulations 1985(**117**) (provision of accommodation and maintenance for children by local authorities and voluntary organisations).

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

**25.** Any payment made by a local authority in accordance with section 17 or 24 of the Children Act 1989(**118**) or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968 (provision of services for children and their families and advice and assistance to certain children).

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

**27.** Any payment of income which by virtue of regulation 35 (income treated as capital) is to be treated as capital.

**28.** Any social fund payment.

**29.** Any payment under section 148 of the 1992 Act (pensioners' Christmas bonus).

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

**31.** The total of a relevant person's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 17(3) (determination of income and capital of members of relevant person's family and of a polygamous marriage) to be disregarded under paragraphs 13 and 14 shall in no case exceed £20 per week.

**32.—(1)** Any payment made under any of the MacFarlane Trusts, the Independent Living Funds or the Fund.

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(115) 1975 c. 72.

(116) 1968 c. 49.

(117) S.I. 1985/1799.

(118) Section 17 was amended by the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21), section 7 and Schedule 3, and by the Social Security (Consequential Provisions) Act 1992 (c. 6), section 4 and Schedule 2; section 24 was amended by the National Health Service and Community Care Act 1990 (c. 19), section 66 and Schedules 9 and 10, and by the Courts and Legal Services Act 1990 (c. 41), section 116 and Schedule 16.



(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the MacFarlane Trusts or the Fund and which is made to or for the benefit of—

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the relevant person's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the relevant person's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, which derives from a payment made under any of the MacFarlane Trusts or the Fund and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the relevant person's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the relevant person's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under any of the MacFarlane Trusts or the Fund, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent to step-parent, or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under any of the MacFarlane Trusts or the Fund, where—

- (a) that person at the date of his death ("the relevant date") had no partner or former partner from whom he was not estranged or divorced, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent, or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the MacFarlane Trusts or the Fund.

**33.** Any housing benefit and any housing benefit in the form of a community charge rebate.

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**34.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

**35.** Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983(**119**).

**36.** Any resettlement benefit which is paid to the relevant person by virtue of regulation 3 of the Social Security (Hospital In-Patients) Amendment (No. 2) Regulations 1987(**120**).

**37.** Any community charge benefit.

**38.** Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988(**121**) or section 9A of the Abolition of Domestic Rates Etc. (Scotland) Act 1987(**122**) (reduction of liability for personal community charges) or reduction of council tax either under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992(**123**) (reduction of liability for council tax).

**39.**—(1) Where the relevant person occupies a dwelling as his only or main residence and he provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to—

- (a) where the aggregate of any payments made in any one week in respect of such accommodation provided to such person does not exceed £20, 100 per cent. of such payments; or
- (b) where the aggregate of any such payments exceeds £20, £20 and 50 per cent. of the excess over £20.

(2) In this paragraph “board and lodging accommodation” means accommodation provided to a person or, where he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked and prepared meals which are both cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and consumed in that accommodation or associated premises.

**40.** Any special war widows payment made under—

- (a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865(**124**);
- (b) the Royal Warrant dated 21st February 1990 amending the Schedule to the Army Pensions Warrant 1977(**125**);
- (c) the Queen’s Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917(**126**);

(**119**) S.I. 1983/1399; relevant amending instruments are S.I. 1984/282 and 1986/1293.

(**120**) S.I. 1987/1683.

(**121**) 1988 c. 41; section 13A was inserted by Schedule 5, paragraphs 1, 5 and 79(3) of the 1989 Act and was repealed, with savings, by the Local Government Finance Act 1992 (c. 14), sections 117(2) and Schedule 14.

(**122**) 1987 c. 47; section 9A was inserted by section 143 of the 1989 Act and was repealed, with savings, by the Local Government Finance Act 1992 (c. 14), section 117(2) and Schedule 14.

(**123**) 1992 c. 14.

(**124**) 1865 c. 73. Copies of the Order are available from: Ministry of Defence, SP Sec. 2c3, Room 5/42, Metropole Building, Northumberland Avenue, London WC2N 5BL.

(**125**) Army Code No. 13045 published by HMSO.

(**126**) 1917 c. 51; section 2 was amended by S.I. 1968/1699, article 5(4)(a). Queen’s Regulations for the Royal Air Force are available from HMSO.

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- (d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980(127);
- (e) the Orders dated 19th February 1990 amending Orders made on 12th December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980(128);

and any analogous payments made by the Secretary of State for Defence to any person who is not a person entitled under the provisions mentioned in sub-paragraphs (a) to (e) of this paragraph.

**41.** Any payment to a juror or witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the 1992 Act, the Social Security Administration Act 1992(129) or the Jobseekers Act 1995(130)

**42.**—(1) Any payment or repayment made—

- (a) as respects England and Wales, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988(131) (travelling expenses and health service supplies);
- (b) as respects Scotland, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988(132) (travelling expenses and health service supplies).

(2) Any payment or repayment made by the Secretary of State for Health, the Secretary of State for Scotland or the Secretary of State for Wales, which is analogous to a payment or repayment mentioned in sub-paragraph (1).

**43.** Any payment made under regulations 9 to 11 or regulation 13 of the Welfare Food Regulations 1988(133) (payments made in place of milk tokens or the supply of vitamins).

**44.** Any payment made by either the Secretary of State for the Home Department or by the Secretary of State for Scotland under a scheme established to assist relatives and other persons to visit persons in custody.

**45.**—(1) Where a relevant person's applicable amount includes an amount by way of the family premium, £15 of any payment of maintenance, whether under a court order or not, which is made or due to be made by—

- (a) the relevant person's former partner, or the relevant person's partner's former partner; or
- (b) the parent of a child or young person where that child or young person is a member of the relevant person's family except where that parent is the relevant person or the relevant person's partner.

(2) For the purpose of sub-paragraph (1), where more than one maintenance payment falls to be taken into account in any week, all such payments shall be aggregated and treated as if they were a single payment.

**46.** Any payment made by the Secretary of State to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April 1988 but who did not become entitled to income support in respect of a period beginning with that day.

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(127) 1980 c. 9. Copies of the Regulations are available from: Ministry of Defence, SP Sec. 2d, Room 5/36, Metropole Building, Northumberland Avenue, London WC2N 5BL.

(128) Army Code 60589 published by HMSO.

(129) 1992 c. 5.

(130) 1995 c. 18.

(131) S.I. 1988/551; relevant amending instruments are S.I. 1990/918, 1991/557 and 1992/1104.

(132) S.I. 1988/546; relevant amending instruments are S.I. 1989/393, 1990/551 and 917, and 1991/575.

(133) S.I. 1988/536; regulation 9A was inserted by S.I. 1990/3, and regulation 10 was amended by S.I. 1990/571 and 1991/585.

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**47.** Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944(**134**) or in accordance with arrangements made under section 2 of the Employment and Training Act 1973(**135**) to assist disabled persons to obtain or retain employment despite their disability.

**48.** Any guardian's allowance under Part III of the 1992 Act.

**49.** Any council tax benefit, including any amount of council tax benefit to which a person is entitled by virtue of regulation 4D of the Council Tax Benefit (General) Regulations 1992(**136**) (entitlement of a refugee to council tax benefit).

**50.**—(1) Where the relevant person is in receipt of any benefit under Parts II, III, or V of the 1992 Act or pension under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(**137**) any increase in the rate of that benefit arising under Part IV (increases for dependants) or section 106(a) (unemployability supplement) of that Act or the rate of that pension under that Order where the dependant in respect of whom the increase is paid is not a member of the relevant person's family.

(2) For the purposes of sub-paragraph (1), an addition to a contribution-based jobseeker's allowance under regulation 9(4) of the Jobseeker's Allowance (Transitional Provisions) Regulations 1995(**137**) shall be treated as an increase of a benefit under the 1992 Act arising under Part IV of that Act.

**51.** Any supplementary pension under article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows)(**138**).

**52.** In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows)(**139**), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

**53.**—(1) Any payment which is—

(a) made under any of the Dispensing Instruments to a widow of a person—

(i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and

(ii) whose service in such capacity terminated before 31st March 1973; and

(b) equal to the amount specified in article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

(2) In this paragraph "the Dispensing Instruments" means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances)(**140**).

**54.** Where the relevant person is entitled to the allowance under regulation 51(1)(bb) of the Disability Working Allowance (General) Regulations 1991(**141**) (which applies in respect of a

(134) 1944 c. 10.

(135) 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19), and repealed in part by the Employment Act 1989 (c. 38), section 29 and Schedule 7.

(136) S.I. 1992/1814; relevant amending instruments are S.I. 1993/688, 2118, 1994/470, 1807, 1995/559, 1996/30 and 462.

(137) S.I. 1983/883, amended by S.I. 1983/1116, 1521, 1984/1154, 1687, 1985/1201, 1986/592, 1987/165, 1988/248, 2248, 1989/156, 1990/250, 1308, 1991/766, 1992/710, 3208, 1993/598, 1994/772, 1906 and 1995/766.

(137) S.I. 1983/883, amended by S.I. 1983/1116, 1521, 1984/1154, 1687, 1985/1201, 1986/592, 1987/165, 1988/248, 2248, 1989/156, 1990/250, 1308, 1991/766, 1992/710, 3208, 1993/598, 1994/772, 1906 and 1995/766.

(138) S.I. 1983/883; relevant amending instruments are S.I. 1993/598, 1994/1906.

(139) S.I. 1983/686; relevant amending instruments are S.I. 1994/715, 1994/2021.

(140) Copies of the Dispensing Instruments are available from the Department of Social Security, A1, 6th Floor, Adelphi, 1–11 John Adam Street, London WC2N 6HT.

(141) S.I. 1991/2887; sub-paragraph (bb) was inserted in regulation 51(1) by S.I. 1995/1339.

person who works for not less than 30 hours a week), any amount of disability working allowance up to the amount specified in Column (2) against paragraph 2A(142) of Schedule 5 to those Regulations.

55. Where the relevant person is entitled to the credit under regulation 46(1)(aa) of the Family Credit (General) Regulations 1987(143) (which applies in respect of a person who works for not less than 30 hours a week), any amount of family credit up to the amounts specified in Column (2) against paragraph 1A(144) of Schedule 4 to those Regulations.

56. Where the relevant person is entitled to the additional allowance under rule 54(4) of the Earnings Top-up Scheme (which applies in respect of a person who works for not less than 30 hours a week), any amount of earnings top-up to the amount specified in Column (2) against paragraph 3 of Schedule 2 to that Scheme.

57. Any amount of housing benefit to which a person is entitled by virtue of regulation 7B of the Housing Benefit (General) Regulations 1987(145).

58. Any amount of income support to which a person is entitled by virtue of regulation 21ZA of the Income Support (General) Regulations 1987(146) (treatment of refugees).

#### SCHEDULE 4

Regulation 33(2)

#### CAPITAL TO BE DISREGARDED

1. The dwelling or building to which the application relates.

2. Any one dwelling normally occupied by the relevant person as his only or main residence including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated; but, notwithstanding regulation 17 (determination of income and capital of members of relevant person's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

3. Any dwelling which the relevant person intends to occupy as his only or main residence and—

- (a) which he acquires for occupation, and intends to occupy as such residence within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the relevant person to obtain possession and commence occupation, or
- (b) in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings, whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation, or
- (c) to which essential repairs or alterations are required in order to render it fit for such occupation, for such period as is necessary to enable those repairs or alterations to be carried out,

but, notwithstanding regulation 17 (determination of income and capital of members of relevant person's family and of a polygamous marriage) only one dwelling shall be disregarded under this paragraph.

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(142) Paragraph 2A was inserted in Schedule 5 by S.I. 1995/1339.

(143) S.I. 1987/1973; sub-paragraph (aa) was inserted in regulation 46(1) by S.I. 1995/1339.

(144) Paragraph 1A was inserted in Schedule 4 by S.I. 1995/1339.

(145) S.I. 1987/1971; regulation 7B was inserted by S.I. 1996/2432.

(146) S.I. 1987/1967; regulation 21ZA was inserted by S.I. 1996/2431.

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4.—(1) Subject to sub-paragraph (2), any sum directly attributable to the proceeds of sale of any dwelling formerly occupied by the relevant person as his only or main residence to the extent to which it is to be used for the purchase of either—

- (a) the dwelling or building to which the application relates, or
- (b) any dwelling, other than that to which the application relates, which is intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the relevant person to complete the purchase.

(2) Sub-paragraph (1) shall not apply where a dwelling is disregarded under paragraph 26, and sub-paragraph (1)(b) shall not apply where a dwelling is disregarded under paragraph 3.

5. Any dwelling occupied in whole or in part as his only or main residence—

- (a) by a partner, close relative, grandparent, grandchild, uncle, aunt, nephew or niece of a relevant person who is single or of any member of the family of the relevant person where that person is either aged 60 or over or incapacitated;
- (b) by the former partner of the relevant person; but this provision shall not apply where the former partner is a person from whom the relevant person is estranged or divorced.

6. Where a relevant person is in receipt of income support or an income-based jobseeker's allowance, the whole of his capital.

7. Any future interest in property of any kind, other than land or premises in respect of which the relevant person has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.

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

(2) The assets of any business owned in whole or in part by the relevant person where—

- (a) he is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but
- (b) he intends to become engaged or, as the case may be, re-engaged as a self-employed earner in that business as soon as he recovers or is able to become engaged or re-engaged in that business.

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

- (a) any payment specified in paragraph 5, 7 or 8 of Schedule 3;
- (b) an income-related benefit or supplementary benefit, family income supplement under the Family Income Supplements Act 1970(147) or housing benefit under Part II of the Social Security and Housing Benefits Act 1982(148);
- (c) an income-based jobseeker's allowance; or
- (d) any earnings top-up.

10.—(1) Subject to sub-paragraph (2), any sum—

- (a) paid to the relevant person in consequence of damage to or loss of his only or main residence or any personal possession and intended for its repair or replacement; or

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(147) 1970 c. 55.

(148) 1982 c. 24.

- (b) acquired by the relevant person (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvement to his only or main residence,

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

(2) A sum to which sub-paragraph 1(b) applies shall be disregarded under this paragraph to the extent only that it is not for carrying out works to which the application relates.

**11.** Any sum—

- (a) deposited with a housing association as defined in section 1(1) of the Housing Associations Act 1985(149) as a condition of occupying the only or main residence;
- (b) which was so deposited and which is to be used for the purchase of another dwelling being the only or main residence, for the period of 26 weeks or such longer period as may be reasonable in the circumstances to enable the relevant person to complete the purchase.

**12.** Any personal possessions except those which have been acquired by the relevant person with the intention of reducing his capital in order to increase the amount of grant.

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

**14.—(1)** Subject to sub-paragraph (2), where the funds of a trust are derived from a payment made in consequence of any personal injury to the relevant person, the value of the trust fund and the value of the right to receive any payment under that trust.

(2) Any value to which sub-paragraph (1) applies shall be disregarded under this paragraph to the extent only that it does not represent funds or a payment which are for carrying out works to which the application relates.

**15.** The value of the right to receive any income under a life interest or from a life rent.

**16.** The value of the right to receive any income which is disregarded under paragraph 13 of Schedule 2 or paragraph 21 of Schedule 3.

**17.** The surrender value of any policy of life insurance.

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

**19.** Any payment made by a local authority in accordance with section 17 or 24 of the Children Act 1989(150) or, as the case may be, section 12, 24, or 26 of the Social Work (Scotland) Act 1968(151) (provision of services for children and their families and advice and assistance to certain children).

**20.** Any social fund payment.

**21.** Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988(152) (mortgage interest payable under deduction of tax) on a payment of relevant

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(149) 1985 c. 69.

(150) 1989 c. 41; section 17 was amended by the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21), section 7 and Schedule 3, and by the Social Security (Consequential Provisions) Act 1992 (c. 6), section 4 and Schedule 2; section 24 was amended by the National Health Service and Community Care Act 1990 (c. 19), section 66 and Schedules 9 and 10, and by the Courts and Legal Services Act 1990 (c. 41), section 116 and Schedule 16.

(151) 1968 c. 49.

(152) 1988 c. 1; section 369 was amended by the Finance Act 1991 (c. 31), section 27 and the Finance (No. 2) Act 1992 (c. 48), section 19.



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loan interest for the purpose of acquiring an interest in the only or main residence or carrying out repairs or improvements to that residence.

22. Any capital which by virtue of regulation 30, 32(5) or 46 (capital treated as income, modifications in respect of children and young persons, and treatment of student loans) is to be treated as income.

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

24.—(1) Any payment made under the MacFarlane Trusts, the Independent Living Funds or the Fund.

(2) Any payment by or on behalf of a person who is suffering or suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the MacFarlane Trusts or the Fund and which is made to or for the benefit of—

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the relevant person's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the relevant person's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, which derives from a payment made under any of the MacFarlane Trusts or the Fund and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the relevant person's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the relevant person's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under any of the MacFarlane Trusts or the Fund, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent, or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under any of the MacFarlane Trusts or the Fund, where—

- (a) that person at the date of his death ("the relevant date") had no partner or former partner from whom he was not estranged or divorced, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—



- (i) to that person's parent or step-parent, or
- (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the MacFarlane Trusts or the Fund.

**25.**—(1) Where a relevant person has ceased to occupy what was formerly the dwelling occupied as the only or main residence following his estrangement or divorce from his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling, or where the dwelling is occupied by the former partner who is a lone parent, for so long as it is so occupied.

(2) In this paragraph “dwelling” includes any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated.

**26.** Any premises where the relevant person is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.

**27.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

**28.** Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983(**153**).

**29.** The value of the right to receive an occupational or personal pension.

**30.** The value of any funds held under a personal pension scheme or retirement annuity contract.

**31.** The value of the right to receive any rent except where the relevant person has a reversionary interest in the property in respect of which rent is due.

**32.** Any payment in kind made by a charity or under the MacFarlane (Special Payments) Trust, the MacFarlane (Special Payments) (No. 2) Trust, the Fund, or the Independent Living (1993) Fund.

**33.** £200 of any payment or, if the payment is less than £200, the whole of any payment, made under section 2 of the Employment and Training Act 1973(**154**) (functions of the Secretary of State) or under section 2 of the Enterprise and New Towns (Scotland) Act 1990(**155**) (functions in relation to training for employment etc) as a training bonus to a person participating in arrangements for training made under either of those sections.

**34.** Any housing benefit, or housing benefit in the form of a community charge rebate.

**35.** Any community charge benefit.

**36.** Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988(**156**) or section 9A of

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(153) S.I. 1983/1399.

(154) 1973 c. 50; section 2 was substituted by the Employment Act 1988 (c. 19), section 25, and repealed in part by the Employment Act 1989 (c. 38), section 29 and Schedule 7.

(155) 1990 c. 35.

(156) 1988 c. 41; section 13A was inserted by paragraphs 1, 5 and 79(3) of Schedule 5 to the 1989 Act and was repealed, with savings, by the Local Government Finance Act 1992 (c. 14), section 117(2) and Schedule 14.

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the Abolition of Domestic Rates Etc. (Scotland) Act 1987(**157**) (reduction of liability for personal community charge) or reduction of council tax either under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992(**158**) (reduction of liability for council tax).

**37.**—(1) Subject to sub-paragraph (2), any grant made to the relevant person in accordance with a scheme made under section 129 of the Housing Act 1988(**159**) or section 66 of the Housing (Scotland) Act 1988(**160**) (schemes for payments to assist local authority tenants to obtain other accommodation) which is to be used—

- (a) to purchase premises intended for occupation as his only or main residence; or
- (b) to carry out repairs or alterations which are required to render premises fit for such occupation,

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

(2) A grant to which sub-paragraph (1) applies shall be disregarded under this paragraph to the extent only that it is not for carrying out works to which the application relates.

**38.** Any arrears of special war widows payment which is disregarded under paragraph 40 of Schedule 3 (sums to be disregarded in the determination of income other than earnings) or of any amount which is disregarded under paragraph 51, 52 or 53 of that Schedule.

**39.**—(1) Any payment or repayment made—

- (a) as respects England and Wales, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988(**161**) (travelling expenses and health service supplies);
- (b) as respects Scotland, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988(**162**) (travelling expenses and health service supplies).

(2) Any payment or repayment by the Secretary of State for Health, the Secretary of State for Scotland or the Secretary of State for Wales which is analogous to a payment or repayment mentioned in sub-paragraph (1).

**40.** Any payment made under regulations 9 to 11 or regulation 13 of the Welfare Food Regulations 1988(**163**) (payments made in place of milk tokens or the supply of vitamins).

**41.** Any payment made either by the Secretary of State for the Home Department or by the Secretary of State for Scotland under a scheme established to assist relatives and other persons to visit persons in custody.

**42.** Any payment made by the Secretary of State to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April 1988 but who did not become entitled to income support in respect of a period beginning with that day.

**43.** Any payment (other than a training allowance, or a training bonus under section 2 of the Employment and Training Act 1973) made, whether by the Secretary of State or any other person,

(157) 1987 c. 47; section 9A was inserted by section 143 of the 1989 Act and was repealed, with savings, by the Local Government Finance Act 1992 (c. 14), section 117(2) and Schedule 14.

(158) 1992 c. 14.

(159) 1988 c. 50.

(160) 1988 c. 43; section 129(5)(a) and (b) was repealed by section 194 of, and Schedule 12, to the 1989 Act.

(161) S.I. 1988/551, relevant amending instruments are S.I. 1990/918, 1991/557 and 1992/1104.

(162) S.I. 1988/546; relevant amending instruments are S.I. 1989/393, 1990/551, 1990/917, and 1991/575.

(163) S.I. 1988/536; regulation 9A was inserted by S.I. 1990/3, and regulation 10 was amended by S.I. 1990/571 and 1991/585.

under the Disabled Persons (Employment) Act 1944(**164**) or in accordance with arrangements made under section 2 of the Employment and Training Act 1973 to assist disabled persons to obtain or retain employment despite their disability.

**44.** Any payment made by a local authority under section 3 of the Disabled Persons (Employment) Act 1958(**165**) to homeworkers assisted under the Blind Homeworkers' Scheme.

**45.** Any council tax benefit, including any amount of council tax benefit to which a person is entitled by virtue of regulation 4D of the Council Tax Benefit (General) Regulations 1992(**166**) (entitlement of a refugee to council tax benefit).

**46.** Any sum of capital administered on behalf of a person under the age of 18 by the High Court under the provisions of Order 80 of the Rules of the Supreme Court 1965(**167**), the county court under Order 10 of the County Court Rules 1981(**168**), or the Court of Protection, where such sum derives from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents.

**47.** Any sum of capital administered on behalf of a person under the age of 18 in accordance with an order made under Rule 43.15 of the Act of Sederunt (Rules of the Court of Session 1994) 1994(**169**) or under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment) 1965(**170**), or under Rule 36.14 of the Ordinary Cause Rules 1993(**171**), or under Rule 128 of the Ordinary Cause Rules(**172**) where such sum derives from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents.

**48.** Any payment to the relevant person as holder of the Victoria Cross or George Cross.

**49.** Any back to work bonus payable by way of a jobseeker's allowance or income support in accordance with section 26 of the Jobseeker's Act 1995(**173**), or a corresponding payment under article 28 of the Jobseekers (Northern Ireland) Order 1995(**174**).

**50.** Any amount of housing benefit to which a person is entitled by virtue of regulation 7B of the Housing Benefit (General) Regulations 1987(**175**).

**51.** Any amount of income support to which a person is entitled by virtue of regulation 21ZA of the Income Support (General) Regulations 1987(**176**) (treatment of refugees).

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(164) 1994 c. 10.

(165) 1958 c. 33; section 3 was amended by the Local Authority Social Services Act 1970 (c. 42), section 14 and Schedule 3; the Local Government Act 1972 (c. 70), sections 195 and 272 and Schedules 23 and 30; the National Health Service Act 1979 (c. 49), section 129 and Schedule 15; and the Local Government Act 1985 (c. 51), section 102 and Schedule 17.

(166) S.I. 1992/1814; regulation 4D was inserted by S.I. 1996/2432.

(167) S.I. 1965/1776; for Order 80 as currently in force see "The Supreme Court Practice 1997", ISBN 0-421-57620-0.

(168) S.I. 1981/1687; for Order 10 as currently in force see "The County Court Practice 1996", ISBN 0-406-06506-3; or "The Supreme Court Practice 1997: County Court Rules: 1997 Edition", ISBN 0-421-586-303.

(169) S.I. 1994/1443.

(170) S.I. 1965/321.

(171) First Schedule to the Sheriff Courts (Scotland) Act 1907 (c. 51) as substituted in respect of causes commenced on or after 1st January 1994 by S.I. 1993/1956.

(172) First Schedule to the Sheriff Courts (Scotland) Act 1907 as substituted by S.I. 1983/747.

(173) 1995 c. 18.

(174) S.I. 1995/2705 (N.I. 15).

(175) S.I. 1987/1971; regulation 7B was inserted by S.I. 1996/2432.

(176) S.I. 1987/1967; regulation 21ZA was inserted by S.I. 1996/2431.

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## EXPLANATORY NOTE

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

These Regulations apply to main grants for the renewal of private sector housing under Chapter I of Part I of the Housing Grants, Construction and Regeneration Act 1996 (“the Act”).

Part I of the Regulations begins with interpretation (regulation 2). Regulation 3 provides for the exclusion of “persons from abroad”, as defined by housing benefit rules, from eligibility for grant. Regulation 4 permits local housing authorities to obtain, in the case of landlord’s applications under section 31 of the Act, information from pension fund holders about pension or retirement annuity income foregone by the applicant (thereby mirroring regulation 31(3) to (8) for owner-occupier’s and tenant’s applications).

Part II sets out the means test for owner-occupier’s and tenant’s applications for renovation grant and disabled facilities grant within the meaning of section 30 of the Act (save for landlord’s applications for disabled facilities grant). The test applies also to tenant participants in a tenants’ application for common parts grant, by virtue of section 32(5) of the Act. The Regulations consolidate, with modifications reflecting recent changes to housing benefit rules and minor and drafting amendments, the Housing Renovation etc. Grants (Reduction of Grant) Regulations 1994 (“the 1994 Regulations”).

The Part II means test differs from that contained in the 1994 Regulations in particular in that regulation 5 defines “relevant person” more narrowly in relation to disabled facilities grant applications, and that Chapter X of Part II (students) has been redrafted to take account of recent changes to the funding of higher education.

Regulation 48 provides that these Regulations shall not apply in respect of applications made before 17th December 1996 (the date on which these Regulations come into force).