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STATUTORY INSTRUMENTS

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**1996 No. 2890**

**The Housing Renewal Grants Regulations 1996**

**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(1) 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(2) or the Adoption Agencies (Scotland) Regulations 1984(3).
- (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(4), the Air Force Act 1955(5), the Naval Discipline Act 1957(6), the Adoption Act 1958(7), the Matrimonial Proceedings (Children) Act 1958(8), the Social Work (Scotland) Act 1968(9), the Family Law Reform Act 1969(10), the Children and Young Persons Act 1969(11), the Matrimonial Causes Act 1973(12), the Guardianship Act 1973(13), the Children Act 1975(14), the Domestic Proceedings and Magistrates’ Courts Act 1978(15), the Adoption (Scotland) Act 1978(16), the Child Care Act 1980(17), the Family Law Act 1986(18) and the Children Act 1989(19).

### **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.

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(1) 1989 c. 41; section 23 was amended by the Courts and Legal Services Act 1990 (c. 41), section 116 and Schedule 16.  
(2) S.I. 1983/1964.  
(3) S.I. 1984/988.  
(4) 1955 c. 18.  
(5) 1955 c. 19.  
(6) 1957 c. 53.  
(7) 1958 c. 5.  
(8) 1958 c. 40.  
(9) 1968 c. 49.  
(10) 1969 c. 46.  
(11) 1969 c. 54.  
(12) 1973 c. 18.  
(13) 1973 c. 29.  
(14) 1975 c. 72.  
(15) 1978 c. 22.  
(16) 1978 c. 28.  
(17) 1980 c. 5.  
(18) 1986 c. 55.  
(19) 1989 c. 41.

- (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 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(20) or regulations 10 and 11 of the Housing Renovation etc. Grants (Reduction of Grant) Regulations 1994(21);

- (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;
  - (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.

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

(21) 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.

### 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<sup>(22)</sup> made under section 171E of the 1992 Act<sup>(23)</sup> (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<sup>(24)</sup> (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<sup>(25)</sup> (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<sup>(26)</sup> (patients);

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<sup>(22)</sup> S.I. 1995/311.

<sup>(23)</sup> Section 171E is inserted into the 1992 Act by section 6(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

<sup>(24)</sup> 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).

<sup>(25)</sup> 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.

<sup>(26)</sup> S.I. 1987/1971.

- (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<sup>(27)</sup>; 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<sup>(28)</sup> (provision of vehicles for those suffering disability) or under section 46 of the National Health Service (Scotland) Act 1978<sup>(29)</sup> (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<sup>(30)</sup> (provision of vehicles for persons suffering from physical defect or disability).
- (4) In this regulation—

“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>(31)</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>(32)</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

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

(28) 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).

(29) 1978 c. 29.

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

(31) 1994 c. 39.

(32) 1989 c. 41.

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.

#### **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>(33)</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;
  - (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<sup>(34)</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(35)</sup> 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<sup>(36)</sup>, 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.

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<sup>(34)</sup> 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.

<sup>(35)</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.

<sup>(36)</sup> S.I. 1975/529, amended by S.I. 1975/1058, 1984/1303 and 1995/829.

(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.

(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<sup>(37)</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 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

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<sup>(37)</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.

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.

## *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>(38)</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;

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(38) 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) 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
  - (b) “rent” means eligible rent within the meaning of regulation 10(3) of the Housing Benefit (General) Regulations 1987<sup>(39)</sup> (rent), less any deductions in respect of non-dependants which fall to be made under regulation 63<sup>(40)</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).

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<sup>(39)</sup> S.I. 1987/1971; regulation 10 was amended by S.I. 1988/1971, 1990/546, 1993/317 and 1995/1644 and 2868.

<sup>(40)</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) 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.

(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)(41) (rent) of the Housing Benefit (General) Regulations 1987, less any deductions in respect of non-dependants which fall to be made under regulation 63(42) (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 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(43);

“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

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

(42) 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.

(43) 1992 c. 37.

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(44) (interpretation), a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973(45), an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986(46), any body which is a research council for the purposes of the Science and Technology Act 1965(47) or any analogous government department, authority, board or body of the Channel Islands, Isle of Man or any other country outside Great Britain;

“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(48), section 65 of the Further and Higher Education Act 1992(49), section 73 of the Education (Scotland) Act 1980(50) or section 40 of the Further and Higher Education (Scotland) Act 1992(51);

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(44) 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).

(45) 1973 c. 65.

(46) S.I. 1986/594 (N.I. 3).

(47) 1965 c. 4.

(48) 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).

(49) 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).

(50) 1980 c. 44.

“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<sup>(52)</sup>;

“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>(53)</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.

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<sup>(51)</sup> 1992 c. 37.

<sup>(52)</sup> S.I. 1995/3321, amended by S.I. 1996/2088.

<sup>(53)</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.



### **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 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>(54)</sup> or article 3 of the Education (Student Loans) (Northern Ireland) Order 1990<sup>(55)</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.

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<sup>(54)</sup> 1990 c. 6; section 1 was amended by the Further and Higher Education Act 1992 (c. 13), section 93 and Schedule 8.  
<sup>(55)</sup> S.I. 1990/1506 (N.I. 11).