

**2002 No. 1792****SOCIAL SECURITY****The State Pension Credit Regulations 2002***Made - - - -**11th July 2002**Coming into force**6th October 2003*

Whereas a draft of this instrument was laid before Parliament in accordance with section 19(2) of the State Pension Credit Act 2002 and section 11(3) of the Social Security Fraud Act 2001 and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 175(3) to (5) of the Social Security Contributions and Benefits Act 1992(a), sections 7(4A), 9(4A) and 11(1) and (4) of the Social Security Fraud Act 2001(b) and sections 1(5), 2(3), (4) and (6), 3(4) to (8), 4(3), 5, 6(2), 7(4), 9(4) and (5), 12(2) and (3), 15, 16(2) and 17(1) and (2) of the State Pension Credit Act 2002(c), hereby makes the following regulations:

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- 1A. Disapplication of section 1(1A) of the Social Security Administration Act.

**PART II***Entitlement and amount*

2. Persons not in Great Britain
3. Persons temporarily absent from Great Britain
- 3A. Persons temporarily absent from Great Britain on 6th October 2008
4. Persons receiving treatment outside Great Britain
5. Persons treated as being or not being members of the same household
6. Amount of the guarantee credit
7. Savings credit
8. Special groups
9. Qualifying income for the purposes of savings credit
10. Assessed income period

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(a) 1992 c. 4; section 175 (3) to (5) is applied to provisions of the State Pension Credit Act 2002 by section 19(1) of that Act.

(b) 2001 c. 11; sections 7(4A) and 9(4A) were inserted by the State Pension Credit Act 2002, Schedule 2, paragraphs 45(2) and 46(3).

(c) 2002 c. 16.

- 11. Retirement provision in assessed income period
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- 13A. Part-weeks
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- 15. Income for the purposes of the Act
- 16. Retirement pension income
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- 18. Notional income
- 19. Calculation of capital in the United Kingdom
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- 23. Capital jointly held
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- 25. Loss of benefit

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Part II Amount applicable for carers

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Reg. 1

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## SCHEDULE V

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Part I Capital disregarded for the purpose of calculating income

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## SCHEDULE VI

Sums disregarded from claimant's earnings

## PART I

*General***Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the State Pension Credit Regulations 2002 and shall come into force on 6th October 2003.

(2) In these Regulations—

“the Act” means the State Pension Credit Act 2002;

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

▶<sup>1</sup>“the 2012 Act” means the Welfare Reform Act 2012;◀

▶<sup>2</sup>“adoption leave” means a period of absence from work on ordinary or additional adoption leave in accordance with section 75A or 75B of the Employment Rights Act 1996(b);◀

“the appointed day” means the day appointed under section 13(3) of the Act;

▶<sup>3</sup>“the Armed Forces and Reserve Forces Compensation Scheme” means the scheme established under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004(c);◀

“attendance allowance” means—

(a) an attendance allowance under section 64 of the 1992 Act;

(b) an increase of disablement pension under section 104 or 105 of the 1992 Act;

(c)-(d) ▶<sup>4</sup>◀

(e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(d) or any analogous payment; or

▶<sup>5</sup>(f) any payment based on a need for attendance which is paid as part of a war disablement pension, or any other such payment granted in respect of disablement which falls within regulation 15(5)(ac);◀

▶<sup>6</sup>“armed forces independence payment” means armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;◀

▶<sup>7</sup>“benefit week” means—

(a) where state pension credit is paid in advance, the period of 7 days beginning on the day on which, in the claimant's case, that benefit is payable;

(b) where state pension credit is paid in arrears, the period of 7 days ending on the day on which, in the claimant's case, that benefit is payable.◀

(a) 1992 c. 4.

(b) 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

(c) 2004 c. 32.

(d) S.I. 1983/686; the relevant amending Instruments are S.I. 1983/1164 and 1984/1675.

<sup>1</sup>Defn. of “the 2012 Act” inserted by para. 27(2) of Sch. to S.I. 2013/388 as from 8.4.13.

<sup>2</sup>Defn. of “adoption leave” inserted by reg. 2(2) of S.I. 2003/2274 as from 6.10.03.

<sup>3</sup>Defn. of “the Armed Forces and Reserve Forces Compensation Scheme” inserted by reg. 2(1) of S.I. 2005/574 as from 4.4.05.

<sup>4</sup>Sub-paras. (c) & (d) in defn. of “attendance allowance” omitted by reg. 10(2)(a) of S.I. 2013/2536 as from 29.10.13.

<sup>5</sup>Para. (f) of defn. of “attendance allowance” substituted by reg. 4(2) of S.I. 2008/3157 as from 5.1.09.

<sup>6</sup>Defn. of “armed forces independence payment” inserted by para. 23(2) of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>7</sup>Defn. of “benefit week” substituted by reg. 3(2) of S.I. 2009/3229 as from 6.4.10.

**Reg. 1**

<sup>1</sup>Defn. of “board & lodging accommodation” inserted by reg. 6(2) of S.I. 2005/2465 as from 6.10.05.

►<sup>1</sup>“board and lodging accommodation” means accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of—

- (i) the provision of that accommodation, and
- (ii) at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises,

but not accommodation provided by a close relative of his or of his partner or other than on a commercial basis;◀

“care home” has the meaning it has for the purposes of the Care Standards Act 2000(a) by virtue of section 3 of that Act ►<sup>2</sup>and in Scotland means a care home service◀;

►<sup>3</sup>“care home service” has the meaning assigned to it by paragraph 2 of the Schedule 12 to the Public Services Reform (Scotland) Act 2010;◀

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(b);

►<sup>4</sup>“the Caxton Foundation” means the charitable trust of that name established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;◀

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, ►<sup>5</sup>or if any of the preceding persons is one member of a couple, the other member of that couple◀;

►<sup>6</sup>“contribution-based jobseekers allowance” means an allowance under the Jobseekers Act 1995 as amended by the provision of Part 1 of Schedule 14 to the 2012 Act that remove references to an income-based allowance, and a contribution-based allowance under the Jobseekers Act 1995 as that Act has effect apart from those provisions;◀

►<sup>7</sup>“contributory employment and support allowance” means an allowance under Part 1 of the Welfare Reform Act as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the 2012 Act that removed references to an income-related allowance and a contributory allowance under Part 1 of the Welfare Reform Act as that Part has effect apart from those provisions;◀

*The following regulation 1(2) definition of “contributory employment and support allowance” continues to be reproduced as it is maintained in force in certain circumstances. See Explanatory Note of S.I. 2013/630 for when to apply*

►<sup>8</sup>“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act (employment and support allowance);◀

►<sup>9</sup>“couple” means—

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;◀

►<sup>10</sup>“the Computation of Earnings Regulations” means the Social Security Benefit (Computation of Earnings) Regulations 1996(c);

“dwelling occupied as the home” means the dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, anycroft land on which the dwelling is situated;◀

<sup>2</sup>Words inserted in defn. of “care home” by para. 1(a) of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>3</sup>Defn. of “care home service” substituted by para. 35(a) of Sch. 2 to S.I. 2011/2581 as from 28.10.11.

<sup>4</sup>Defn. of “the Caxton Foundation” inserted in reg. 1 by reg. 15(2)(a) of S.I. 2011/2425 as from 31.10.11.

<sup>5</sup>Words substituted in defn. of “close relative” by para. 35(2)(a)(i) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

<sup>6</sup>Defn. of “contribution-based jobseekers allowance” inserted by reg. 33(2)(a) of S.I. 2013/630 as from 29.4.13.

<sup>7</sup>Defn of “contributory employment and support allowance” substituted by reg. 33(2)(d) of S.I. 2013/630 as from 29.4.13.

<sup>8</sup>Defn. for “contributory employment and support allowance” inserted by reg. 4(2)(a) of S.I. 2008/1554 as from 27.10.08.

<sup>9</sup>Defn. of “couple” inserted by para. 35(2)(a)(ii) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

<sup>10</sup>Defns. of “the Computation of Earnings Regulations” & “dwelling occupied as the home” inserted by reg. 23(a) of S.I. 2002/3019 as from 6.10.03.

(a) 2000 c. 14.

(b) S.I. 1987/1968; the relevant amending Instrument is S.I. 1999/3108.

(c) S.I. 1996/2745; the relevant amending Instruments are S.I. 1999/1958, 2422, 2739, 2860 and 3178.

“Eileen Trust” means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

▶<sup>1</sup>“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;◀

▶<sup>2</sup>“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament ▶<sup>3</sup>or the National Assembly for Wales◀;◀

▶<sup>4</sup>“equity release scheme” means a loan—

- (a) made between a person (“the lender”) and the claimant;
- (b) by means of which a sum of money is advanced by the lender to the claimant by way of payments at regular intervals; and
- (c) which is secured on a dwelling in which the claimant owns an estate or interest and which he occupies as his home;◀

▶<sup>5</sup>“foreign state retirement pension” means any pension which is paid under the law of a country outside the United Kingdom and is in the nature of social security;◀

“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, in Scotland, on 10th April 1992;

“full-time student” has the meaning prescribed in regulation 61(1) of the Income Support Regulations;

▶<sup>6</sup>“the Graduated Retirement Benefit Regulations” means the Social Security (Graduated Retirement Benefit) Regulations 2005(a)◀

▶<sup>7</sup>“a guaranteed income payment” means a payment made under article 14(1)(b) or article 21(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(b);◀

▶<sup>8</sup>“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (employment and support allowance);◀

▶<sup>9</sup>“the Health Service Act” means “the National Health Service Act 2006”;

“the Health Service (Wales) Act” means “the National Health Service (Wales) Act 2006”;◀

▶<sup>10</sup>“income-based jobseeker’s allowance” means an income-based allowance under the Jobseekers Act 1995;◀

“the Income Support Regulations” means the Income Support (General) Regulations 1987(c);

▶<sup>11</sup>“independent hospital”—

- (a) in England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section;
- (b) in Wales, has the meaning assigned to it by section 2 of the Care Standards Act 2000, and

▶<sup>12</sup>(c) in Scotland, means an independent healthcare service as defined in section 10F(1)(a) and (b) of the National Health Service (Scotland) Act 1978;◀

▶<sup>13</sup>◀

▶<sup>14</sup>“the Independent Living Fund (2006)” means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part;◀

▶<sup>13</sup>◀

▶<sup>13</sup>◀

▶<sup>13</sup>◀

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996(d);

<sup>1</sup>Defn. for “the Employment & Support Allowance Regulations” inserted by reg. 4(2)(b) of S.I. 2008/1554 as from 27.10.08.

<sup>2</sup>Defn. of “enactment” inserted in reg. 1 by reg. 5(2) of S.I. 2009/2655. See reg. 1(2)(c) to this S.I. for the relevant commencement date.

<sup>3</sup>Words inserted into defn. of “enactment” by reg. 10(2)(b) of S.I. 2013/2536 as from 29.10.13.

<sup>4</sup>Defn. of “equity release scheme” inserted in reg. 1(2) by reg. 7(2) of S.I. 2004/2327 as from 4.10.04.

<sup>5</sup>Defn. of “foreign state retirement pension” inserted by reg. 6(2) of S.I. 2010/641. See reg. 1 to this S.I. for relevant effective date.

<sup>6</sup>Defn. “Graduated Retirement Benefit Regulations” inserted by reg. 13(2) of S.I. 2005/2677 as from 6.4.06.

<sup>7</sup>Defn. of “a guaranteed income payment” inserted by reg. 2(1) of S.I. 2005/574 as from 4.4.05.

<sup>8</sup>Defns. for “income-related employment and support allowance” inserted by reg. 4(2)(c) of S.I. 2008/1554 as from 27.10.08.

<sup>9</sup>Defns. of “the Health Service Act” and “the Health Service (Wales) Act” inserted by reg. 5(2)(b) of S.I. 2008/2767 as from 17.11.08.

<sup>10</sup>Defn. of “income-based jobseeker’s allowance” inserted by reg. 33(2)(b) of S.I. 2013/630 as from 29.4.13.

<sup>11</sup>Defn. of “independent hospital” substituted by reg. 12 of S.I. 2010/1881 as from 1.10.10.

<sup>12</sup>Sub-para. (c) in defn. of “independent hospital” substituted by para. 35(b) of Sch. 2 to S.I. 2011/2581 as from 28.10.11.

<sup>13</sup>Defns. of “the Independent Living Fund”, “the Independent Living Funds”, “the Independent Living (Extension) Fund” and “the Independent Living (1993) Fund” omitted by reg. 5(2)(a) of S.I. 2008/2767 as from 17.11.08.

<sup>14</sup>Defn. of “the Independent Living Fund (2006)” inserted by reg. 6(2) of S.I. 2007/2538 as from 1.10.07.

(a) S.I. 2005/464.

(b) S.I. 2005/439.

(c) S.I. 1987/1967.

(d) S.I. 1996/207.

## Reg. 1

<sup>1</sup>Defn. of “local welfare provision” inserted by reg. 6(2) of S.I. 2013/443 as from 2.4.13.

►<sup>1</sup>“local welfare provision” means occasional financial or other assistance given by a local authority, the Scottish Ministers or the Welsh Ministers, or a person authorised to exercise any function of, or provide a service to, them, to or in respect of individuals for the purpose of—

- (a) meeting, or helping to meet, an immediate short term need—
  - (i) arising out of an exceptional event, or exceptional circumstances; and
  - (ii) that requires to be met in order to avoid a risk to the well-being of an individual; or
- (b) enabling individuals to establish or maintain a settled home, where those individuals have been or, without the assistance, might otherwise be—
  - (i) in prison, hospital, a residential care establishment or other institution; or
  - (ii) homeless or otherwise living an unsettled way of life;◀

<sup>2</sup>Defn. of “the London Bombings Relief Charitable Fund” inserted by reg. 7(2) of S.I. 2005/3391 as from 12.12.05.

►<sup>2</sup>“the London Bombings Relief Charitable Fund” means the company limited by guarantee (number 5505072) and registered charity of that name established on 11th July 2005 for the purpose of (amongst other things) relieving sickness, disability or financial need of victims (including families or dependants of victims) of the terrorist attacks carried out in London on 7th July 2005;◀

“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 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;

<sup>3</sup>Defn. of “MFET Limited” inserted by reg. 6(2) of S.I. 2010/641. See reg. 1 to this S.I. for relevant effective date.

►<sup>3</sup>“MFET Limited” means the company limited by guarantee (number 7121661) of that name, established for the purpose in particular of making payments in accordance with arrangements made with the Secretary of State to persons who have acquired HIV as a result of treatment by the NHS with blood or blood products;◀

<sup>4</sup>Defn. of “paternity leave” substituted by reg. 5(2) of S.I. 2012/757 as from 1.4.12.

►<sup>4</sup>“paternity leave” means a period of absence from work on ►<sup>5</sup>◀ paternity leave by virtue of section 80A or 80B of the Employment Rights Act 1996 ►<sup>5</sup>◀;◀

<sup>5</sup>Words in defn. of “paternity leave” omitted by reg. 10(2)(a) (i) & (ii) of S.I. 2014/3255 as from 5.4.15.

►<sup>6</sup>“patient”, except in Schedule II, means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005(a)◀;

<sup>6</sup>Defn. of “patient” substituted by reg. 8(2) of S.I. 2005/3360 as from 10.4.06.

“pension fund holder” means with respect to ►<sup>7</sup>◀ an occupational pension scheme,◀ 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;

<sup>7</sup>Words inserted in defn. of “pension fund holder” by reg. 10(2) of S.I. 2007/2618 as from 10.9.07.

“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;

<sup>8</sup>Defn. of “personal independence payment” inserted by para. 27(2) of Sch. to S.I. 2013/388 as from 8.4.13.

►<sup>8</sup>“personal independence payment” means personal independence payment under Part 4 of the 2012 Act;◀

“prisoner” means a person who—

- (a) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
- (b) is on temporary release in accordance with the provisions of the Prison Act 1952(b) or the Prisons (Scotland) Act 1989(c),

other than a person detained in hospital under the provisions of the Mental Health Act 1983(d), or in Scotland, under the provisions of the ►<sup>9</sup>◀Mental Health (Care and Treatment) (Scotland) Act 1984◀ or the Criminal Procedure (Scotland) Act 1995(e);

<sup>9</sup>Words substituted in defn. of “prisoner” by art. 35(1) of S.S.I. 2005/445 as from 5.10.05.

(a) S.I. 2005/3360.

(b) 1952 c. 52.

(c) 1989 c. 45.

(d) 1983 c. 20.

(e) 1995 c. 46

## Reg. 1

►<sup>1</sup>“public authority” includes any person certain of whose functions are functions of a public nature;◄

“qualifying person” means a person in respect of whom payment has been made from the Fund ►<sup>2</sup>, the Eileen Trust ►<sup>3</sup>, MFET Limited◄►<sup>4</sup>, the Skipton Fund ►<sup>5</sup> the Caxton Foundation◄ or the London Bombings Relief Charitable Fund◄◄;

►<sup>6</sup>◄

►<sup>7</sup>“shared parental leave” means leave under section 75E or 75G of the Employment Rights Act 1996;◄

►<sup>2</sup>“the Skipton Fund” means the ex-gratia payment scheme administered by the Skipton Fund Limited, incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme’s provisions;◄

►<sup>8</sup>“universal credit” means universal credit under Part 1 of the 2012 Act;◄

►<sup>9</sup>“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;◄

“water charges” means—

(a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part V of the Water Industry Act 1991(a);

(b) as respects Scotland, any water and sewerage charges under Schedule 11 to the Local Government Finance Act 1992(b);

in so far as such charges are in respect of the dwelling which a person occupies as his home;

►<sup>10</sup>“the Welfare Reform Act” means the Welfare Reform Act 2007.◄

(3) In these Regulations, unless the context otherwise requires, a member of ►<sup>11</sup>a couple◄ is referred to as a partner and both members are referred to as partners.

►<sup>12</sup>(3A) References in these Regulations to a claimant participating as a service user are to—

(a) a person who is being consulted by or on behalf of—

(i) a body which has a statutory duty to provide services in the field of health, social care or social housing; or

(ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,

in their capacity as a user, potential user, carer of a user or person otherwise affected by the provision of those services, or

►<sup>13</sup>(ab) a person who is being consulted by or on behalf of—

(i) the Secretary of State in relation to any of the Secretary of State’s functions in the field of social security or child support or under section 2 of the Employment and Training Act 1973(c); or

(ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such functions,

in their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person;◄

(b) the carer of a person consulted under ►<sup>13</sup>sub-paragraph’s (a) or (ab).◄◄

<sup>1</sup>Defns. of “public authority” inserted by reg. 5(2) of S.I. 2009/2655. See reg. 1(2)(c) to this S.I. for the relevant commencement date.

<sup>2</sup>Words substituted in defn. of “qualifying person” & defn. of “the Skipton Fund” inserted by reg. 2(a) of S.I. 2004/1141 as from 12.5.04.

<sup>3</sup>Words inserted in defn. of “qualifying person” by reg. 6(3)(a) of S.I. 2010/641. See reg. 1 to this S.I. for relevant effective date.

<sup>4</sup>Words substituted in defn. of “qualifying person” by reg. 7(2)(b) of S.I. 2005/3391 as from 12.12.05.

<sup>5</sup>Words inserted in defn. of “qualifying person” in reg. 1 by reg. 15(2)(b) of S.I. 2011/2425 as from 31.10.11.

<sup>6</sup>Defn. of “service user group” omitted by reg. 7(2)(a) of S.I. 2014/591 as from 28.4.14.

<sup>7</sup>Defn. of “shared parental leave” inserted by reg. 10(2)(b) of S.I. 2014/3255 as from 31.12.14.

<sup>8</sup>Defn. of “universal credit” inserted by reg. 33(2)(c) of S.I. 2013/630 as from 29.4.13.

<sup>9</sup>Defn. of “voluntary organisation” inserted by para. 1(b) of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>10</sup>Defn. of “the Welfare Reform Act” added by reg. 4(d) of S.I. 2008/1554 in force 27.10.08.

<sup>11</sup>Words substituted in reg. 1(3) by para. 35(2)(b) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

<sup>12</sup>Reg. 1(3A) inserted by reg. 7(2)(b) of S.I. 2014/591 as from 28.4.14.

<sup>13</sup>Reg. 1(3A)(ab) inserted & words in reg. 1(3A)(b) substituted by reg. 2(1)(c) & (2) of S.I. 2015/67 as from 23.2.15.

(a) 1991 c. 56.

(b) 1992 c. 14.

(c) 1973 c. 50. Section 2 was substituted by section 25(1) of the Employment Act 1988.

## Regs. 1-2

- (4) In these Regulations, unless the context otherwise requires, a reference—
- (a) to a numbered section is to the section of the Act bearing that number;
  - (b) to a numbered Part is to the Part of these Regulations bearing that number;
  - (c) to a numbered regulation or Schedule is to the regulation in, or Schedule to, these Regulations bearing that number;
  - (d) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;
  - (e) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

<sup>1</sup>Reg. 1A inserted by reg. 8 of S.I. 2009/471 as from 6.4.09.

►<sup>1</sup>**Disapplication of section 1(1A) of the Social Security Administration Act**

**1A.** Section 1(1A) of the Social Security Administration Act 1992 (requirement to state a national insurance number) shall not apply to a person who—

- (a) is a person in respect of whom a claim for state pension credit is made;
- (b) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act 1999(a);
- (c) does not satisfy the conditions of entitlement to state pension credit as specified in section 1(2); and
- (d) has not previously been allocated a national insurance number. ◀

## PART II

### *Entitlement and amount*

<sup>2</sup>Reg. 2 substituted by reg. 9(2) of S.I. 2006/1026 as from 30.4.06.

►<sup>2</sup>**Persons not in Great Britain**

**2.—(1)** A person is to be treated as not in Great Britain if, subject to the following provisions of this regulation, he is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(2) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3).

(3) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006(b);
- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—
  - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
  - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
- <sup>3</sup>(bb) regulation 15A(1) of these Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of these Regulations; ◀
- (c) Article 6 of Council Directive No. 2004/38/EC(c) ►<sup>3</sup>◀

<sup>3</sup>Words substituted or omitted in reg. 2(3)(bb), (c) by reg. 4 of S.I. 2012/2587 as from 8.11.12.

- 
- (a) 1999 c. 33.
  - (b) S.I. 2006/1003.
  - (c) OJL 158, 30.4.04, p. 77.



- (d) Article 39 of the Treaty establishing the European Community (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland). ►<sup>1</sup>; or◄
- <sup>1</sup>(e) Article 20 of the Treaty on the functioning of the European Union (in a case where the right to reside arises because a British Citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union Citizen)◄
- (4) A person is not to be treated as not in Great Britain if he is—
- <sup>2</sup>(za) a qualified person for the purposes of regulation 6 of the Immigration (European Economic Area) Regulations 2006 as a worker or a self-employed person;
- (zb) a family member of a person referred to in sub-paragraph (za) within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations;
- (zc) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of those Regulations;◄
- (g) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951(a), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(b);
- <sup>3</sup>(h) a person who has been granted leave or who is deemed to have been granted leave outside the rules made under section 3(2) of the Immigration Act 1971 (where that leave is—
- (i) discretionary leave to enter or remain in the United Kingdom;
- (ii) leave to remain under the Destitution Domestic Violence concession(c); or
- (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005(d);◄
- <sup>4</sup>(hh) a person who has humanitarian protection granted under those rules;◄►<sup>3</sup>or◄
- (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(e) and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom; ►<sup>5</sup>◄
- (j)-(k) ►<sup>6</sup>◄
- <sup>7</sup>**Persons temporarily absent from Great Britain**
- 3.** A claimant's entitlement to state pension credit during periods of temporary absence from Great Britain is to continue for up to 13 weeks if—
- (a) the period of the claimant's absence from Great Britain is unlikely to exceed 52 weeks; and
- (b) while absent from Great Britain the claimant continues to satisfy the other conditions of entitlement to state pension credit.

<sup>1</sup>Words substituted or omitted in reg. 2(3)(d) & (e) by reg. 4 of S.I. 2012/2587 as from 8.11.12.

<sup>2</sup>Reg. 2(4)(za)-(zc) substituted for (a)-(f) by reg. 4 of S.I. 2014/902 as from 31.5.14.

<sup>3</sup>Sub-para. (h) substituted and word added at the end of (hh) by reg. 10(3)(a) & (b) of S.I. 2013/2536 as from 29.10.13.

<sup>4</sup>Sub-para. (hh) added by reg. 4(2) of S.I. 2006/2528 as from 9.10.06.

<sup>5</sup>Word omitted in para. 2(4)(i) by reg. 4(2) of S.I. 2009/362 as from 18.3.09.

<sup>6</sup>Sub-paras. (j) & (k) omitted by reg. 10(3)(c) of S.I. 2013/2536 as from 29.10.13.

<sup>7</sup>Reg. 3 substituted & reg. 3A inserted by regs. 3(2) and (3) of S.I. 2008/2424 as from 6.10.08.

(a) Cmd. 9171.

(b) Cmnd. 3906.

(c) The Destitution Domestic Violence concession is published by the Home Office at <http://www.ukba.homeoffice.gov.uk>

(d) S.I. 2005/1379 amended by S.I. 2013/630; there are other amending instruments but none is relevant.

(e) 1999 c. 33.

## Regs. 3A-5

**Persons temporarily absent from Great Britain on 6th October 2008****3A.** Where a claimant—

- (a) is already temporarily absent from Great Britain on 6th October 2008;
- (b) had a continuing entitlement to state pension credit immediately before that day; and
- (c) while absent from Great Britain, continues to satisfy the other conditions of entitlement to state pension credit,

the claimant's entitlement to state pension credit is to continue during that period of absence from Great Britain for up to 13 weeks.◀

**Persons receiving treatment outside Great Britain**

<sup>1</sup>Reg. 4(1) substituted by reg. 5(3) of S.I. 2008/2767 as from 17.11.08.

**4.** ▶<sup>1</sup>(1) For the purposes of the Act, a person who is receiving treatment at a hospital or other institution outside Great Britain shall be treated as being in Great Britain if the treatment is being provided—

- (a) under section 6(2) of the Health Service Act (performance of functions outside England) or section 6(2) of the Health Service (Wales) Act (performance of functions outside Wales);
- (b) pursuant to arrangements made under section 12(1) of the Health Service Act (Secretary of State's arrangements with other bodies), section 10(1) of the Health Service (Wales) Act (Welsh Ministers' arrangements with other bodies), paragraph 18 of Schedule 4 to the Health Service Act (joint exercise of functions) or paragraph 18 of Schedule 3 to the Health Service (Wales) Act (joint exercise of functions);
- (c) under equivalent provision in Scotland or pursuant to arrangements made under such provision.◀

<sup>2</sup>Reg. 4(2) inserted by reg. 23(b) of S.I. 2002/3019 as from 6.10.03.

▶<sup>2</sup>(2) Paragraph (1) applies only where—

- (a) the "person" is the claimant or his partner; and
- (b) the claimant satisfied the conditions for entitlement to state pension credit immediately before he or, as the case may be, his partner, left Great Britain.◀

**Persons treated as being or not being members of the same household**

**5.—**(1) A person is to be treated as not being a member of the same household as the claimant if—

- (a) he is living away from the claimant and—
  - (i) he does not intend to resume living with the claimant; or
  - (ii) his absence is likely to exceed 52 weeks except where there are exceptional circumstances (for example 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;
- (b) he or the claimant is permanently in a care home ▶<sup>3</sup>or an independent hospital◀;
- (c) he or the claimant is, or both are—
  - (i) detained in a hospital provided under ▶<sup>4</sup>the provisions of the Mental Health Act 1983(a), the ▶<sup>5</sup>Mental Health (Care and Treatment) (Scotland) Act 2003◀, or the Criminal Procedure (Scotland) Act 1995(b); or◀

<sup>3</sup>Words inserted in reg. 5(1)(b) by para. 2 of Sch. 5 to S.I. 2005/2687 as from 24.10.05.

<sup>4</sup>Words in para. 5(1)(c) (i) substituted by reg. 2 (5)(a) of S.I. 2003/2274 as from 6.10.03

<sup>5</sup>Words in sub-para. 5(1)(c) (i) substituted by reg. 35(2) of S.S.I. 2005/445 as from 5.10.03.

(a) 1983 c. 20.

(b) 1995 c. 40.

- (ii) detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
  - (iii) on temporary release in accordance with the provisions of the Prison Act 1952(a) or the Prison (Scotland) Act 1989(b);
  - (d) the claimant is abroad and does not satisfy ►<sup>1</sup>◄ regulation 3 (persons temporary absent from Great Britain).
  - (e) ►<sup>2</sup>◄
  - <sup>3</sup>(f) he is absent from Great Britain for more than 13 weeks;◄
  - (g) ►<sup>4</sup>◄
  - <sup>5</sup>(h) he is a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(c)◄
- <sup>6</sup>(1A) Paragraph (1)(d) and (f) shall not apply where a person is treated as being in Great Britain in accordance with regulation 4.◄

(2) Subject to paragraph (1), partners shall be treated as members of the same household notwithstanding that they are temporarily living apart.

(3) ►<sup>3</sup>◄

#### Amount of the guarantee credit

6.—(1) Except as provided in the following provisions of these Regulations, the standard minimum guarantee is—

- (a) ►<sup>7</sup>£237.55◄ per week in the case of a claimant who has a partner;
- (b) ►<sup>7</sup>£155.60◄ per week in the case of a claimant who has no partner.

(2) Paragraph (3) applies in the case of—

- (a) prisoners; and
- (b) members of religious orders who are fully maintained by their order.

(3) In a case to which this paragraph applies—

- (a) section 2(3) has effect with the substitution for the reference to the standard minimum guarantee in section 2(3)(a) of a reference to a nil\* amount; and
- (b) except in the case of a person who is a remand prisoner, nil\* is the prescribed additional amount for the purposes of section 2(3)(b).

\*Amount 'nil' in reg. 6(3)(a) & (b) are maintained in force by art. 21(6) & Sch. 13 of S.I. 2015/457 on or after 6.4.15. See art. 1(2)(i) of the S.I. for when to apply.

(4) Except in a case to which paragraph (3) applies, an amount additional to that prescribed in paragraph (1) shall be applicable under paragraph (5) if the claimant is treated as being a severely disabled person in accordance with paragraph 1 of Part I of Schedule I.

<sup>1</sup>Words in (d) deleted by reg. 2(5)(b) of S.I. 2003/2274 as from 6.10.03.

<sup>2</sup>Para. (e) omitted in reg. 5 by reg. 14(2)(a) of S.I. 2006/2378 as from 2.10.06.

<sup>3</sup>Para. 5(1)(f) substituted & para. (3) omitted by reg. 3(4)(a) & (b) of S.I. 2008/2424 as from 6.10.08.

<sup>4</sup>Sub-para (g) omitted by reg. 2(5)(e) of S.I. 2003/2274 as from 6.10.03.

<sup>5</sup>Sub-para. (h) inserted in reg. 5(1) by para. 2 of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>6</sup>Para. (1A) inserted in reg. 5 by reg. 14(2)(b) of S.I. 2006/2378 as from 2.10.06.

<sup>7</sup>Amounts in reg. 6(1)(a) & (b) substituted by art. 6(a) & (b) of S.I. 2016/230 on or after 11.4.16. See art. 1(1)(c) to this S.I. for when to apply.

(a) 1952 c. 52.

(b) 1989 c. 45.

(c) 1999 c. 33.



(5) The additional amount applicable is—

- (a) except where paragraph (b) applies, ►<sup>1</sup>£61.85◄ per week if paragraph 1(1)(a), (b) or (c) of Part I of Schedule I is satisfied; or
- (b) ►<sup>1</sup>£123.70◄ per week if paragraph 1(1)(b) of Part I of Schedule I is satisfied otherwise than by virtue of paragraph 1(2)(b) of that Part and no one is entitled to and in receipt of an allowance under section 70 of the 1992 Act►<sup>2</sup>, or has an award of universal credit which includes the carer element under regulation 29 of the Universal Credit Regulations 2013,◄ in respect of caring for either partner.

<sup>1</sup>Amounts in reg. 6, (5)(a)-(b) & (8) substituted by art. 21(2)(e) of S.I. 2015/457 on or after 6.4.15. See art. 1(2)(i) for when to apply in certain situations.

<sup>2</sup>Words inserted in reg. 6(5)(b) by reg. 16(2) of S.I. 2015/1754 as from 3.11.15.

(6) Except in a case to which paragraph (3) applies, an amount additional to that prescribed in paragraph (1) shall be applicable—

- (a) if paragraph 4 of Part II of Schedule I is satisfied (amount applicable for carers);
- (b) in accordance with Part III of Schedule I (amount applicable for former claimants of income support or income-based jobseeker's allowance); or
- (c) except where paragraph (7) applies, in accordance with Schedule II (housing costs).

(7) This paragraph applies in the case of a person who has been detained in custody for more than 52 weeks pending trial or sentence following conviction by a court.

(8) The amount applicable if paragraph 4 of Part II of Schedule I is satisfied is ►<sup>1</sup>£34.60◄ per week, and in the case of partners, this amount is applicable in respect of each partner who satisfies that paragraph.

(9) In the case of a remand prisoner paragraph (6) shall apply as if sub-paragraphs (a) and (b) were omitted.

(10) In this regulation, “remand prisoner” means a person who, for a period not exceeding 52 weeks, has been detained in custody on remand pending trial or, as a condition of bail, required to reside in a hostel approved under section 27(1) of the Probation Service Act 1993(a) or, as the case may be, detained pending sentence upon conviction.

### Savings Credit

7.—(1) The percentage prescribed for the purposes of determining—

- (a) the maximum savings credit is ►<sup>3</sup>60 per cent.◄;
- (b) “amount A” in section 3(4) is ►<sup>3</sup>60 per cent.◄;
- (c) “amount B” in section 3(4) is ►<sup>3</sup>40 per cent.◄

<sup>3</sup>Amounts in reg. 7(1)(a)-(c) remain unchanged by reg. 21(3)(a) of S.I. 2015/457 on or after 6.4.15. See art. 1(2)(i) of the S.I. for when to apply in certain situations.

(2) The amount prescribed for the savings credit threshold is ►<sup>4</sup>£133.82◄ for a claimant who has no partner and ►<sup>4</sup>£212.97◄ for a claimant who has a partner.

<sup>4</sup>Amounts in reg. 7(2) substituted by reg. 4(2) of S.I. 2016/242 as from 11.4.16.

(3) The maximum savings credit shall be taken to be Nil\* in the case of—

- (a) prisoners; and
- (b) members of religious orders who are fully maintained by their order.

►<sup>5</sup>(4) If a calculation made for the purposes of paragraph (1)(b) or (c) results in a fraction of a penny, that fraction shall, if it would be to the claimant's advantage, be treated as a penny; otherwise it shall be disregarded.◄

<sup>5</sup>Para. (4) inserted in reg. 7 by reg. 23(d) of S.I. 2002/3019 as from 6.10.03.

\*Amount ‘nil’ in reg. 7(3) maintained in force by art. 21(6) & Sch. 13 of S.I. 2015/457 on or after 6.4.15. See art. 1(2)(i) of the S.I. for when to apply in certain situations.

(a) 1993 c. 47.

**Regs. 7A-10**

<sup>1</sup>Reg. 7A inserted by reg. 2(2) of S.I. 2015/1529 as from 6.4.16.

**►<sup>1</sup>Limitation of savings credit for certain mixed-age couples**

**7A.** A person who is a member of a mixed-age couple, is not entitled to a savings credit unless one of the members of the couple—

- (a) has been awarded a savings credit with effect from a day before 6th April 2016 and was entitled to a savings credit immediately before 6th April 2016, and
- (b) remained entitled to a savings credit at all times since the beginning of 6th April 2016. ◀

**Special groups**

**8.** Schedule III shall have effect in the case of members of polygamous marriages and ►<sup>2</sup>persons serving a sentence of imprisonment detained in hospital◀.

<sup>2</sup>Words in reg. 8 substituted by reg. 4(2) of S.I. 2010/442 as from 25.3.10.

**Qualifying income for the purposes of savings credit**

**9.** For the purposes of section 3 (savings credit), all income is to be treated as qualifying income except the following which is not to be treated as qualifying income—

- (a) working tax credit;
- (b) incapacity benefit;

*The following regulation 9(c) continues to be reproduced as it is maintained in force in certain circumstances. See Explanatory Note of S.I. 2013/630 for when to apply.*

- (c) a contribution-based jobseeker's allowance within the meaning of section 1(4) of the Jobseekers Act 1995(a);
- (c) a contribution-based jobseeker's allowance ►<sup>3</sup>◀;
- (d) severe disablement allowance;
- (e) maternity allowance;
- (f) payments referred to in regulation 15(5)(d) (maintenance payments)►<sup>4</sup>;
- (g) contributory employment and support allowance. ◀

<sup>3</sup>Words in reg. 9(c) omitted by reg. 33(3) of S.I. 2013/630 as from 29.4.13.

<sup>4</sup>Sub-para. 9(g) inserted by reg. 4(3) of S.I. 2008/1554 as from 27.10.08.

**Assessed income period**

**10.—(1)** For the purposes of section 6(2)(b) (circumstances in which the Secretary of State is prevented from specifying an assessed income period), the circumstances are—

- (a) in the case of partners, one partner is under the age of 60; or
- (b) state pension credit is awarded, or awarded at a higher rate, because an element of the claimant's retirement provision which is due to be paid to the claimant stops temporarily.

<sup>5</sup>Sub-para. 10(1)(c) inserted by reg. 2(6) of S.I. 2003/2274 as from 6.10.03.

- <sup>5</sup>(c) that—
  - (i) the Secretary of State has sent the claimant the notification required by regulation 32(6)(a) of the Claims and Payments Regulations; and
  - (ii) the claimant has not provided sufficient information to enable the Secretary of State to determine whether there will be any variation in the claimant's retirement provision throughout the period of 12 months beginning with the day following the day on which the previous assessed income period ends. ◀

(2) The circumstances prescribed for the purposes of section 7(4) (circumstances in which assessed amounts are deemed not to change) are that—

- <sup>6</sup>(a) except where sub-paragraph (b) applies, the arrangements under which the assessed amount is paid contain no provision for periodic increases in the amount payable; or◀
- (b) the assessed income comprises income from capital other than income to which paragraph (7) applies.

<sup>6</sup>Reg. 10(2)(a) substituted by reg. 2(2)(a) of S.I. 2005/3205 as from 18.12.05.

(a) 1995 c. 18.

(3) Paragraphs (4) and (5) do not apply where the assessed amount comprises income from capital.

(4) Where the Secretary of State is informed that the arrangements under which the assessed amount is paid contains provision—

- (a) for the payment to be increased periodically;
- (b) for the date on which the increase is to be paid; and
- (c) for determining the amount of the increase,

the assessed amount shall be deemed to increase from the day specified in paragraph (5) by an amount determined by applying those provisions to the amount payable apart from this paragraph.

►<sup>1</sup>(5) The day referred to in this paragraph is—

- (a) in a case to which paragraph (5A) applies—
  - (i) where the first increased payment date is the day on which the benefit week begins, that day;
  - (ii) where head (i) does not apply, the first day of the next benefit week which begins after that increased payment date;
- (b) in a case to which paragraph (5A) does not apply—
  - (i) where the second increased payment date is the day on which the benefit week begins, that day;
  - (ii) where head (i) does not apply, the first day of the next benefit week following that increased payment date.

<sup>1</sup>Reg. 10(5) substituted for (5), (5A) and (5B) by reg. 3(2) of S.I. 2004/647 as from 5.4.04.

(5A) This paragraph applies where the period which—

- (a) begins on the date from which the increase in the assessed amount is to accrue; and
- (b) ends on the first increased payment date,

is a period of the same length as the period in respect of which the last payment of the pre-increase assessed amount was made.

(5B) In paragraphs (5) and (5A)—

“increased payment date” means a date on which the increase in the assessed amount referred to in paragraph (4) is paid as part of a periodic payment ►<sup>2</sup>◄; and  
 “pre-increase assessed amount” means the assessed amount prior to that increase.◄

<sup>2</sup>Words omitted in reg. 10(5B) by reg. 2(2)(b) of S.I. 2005/3205 as from 18.12.05.

(6) Except where paragraph (4) applies, the assessed amount shall be deemed to increase

- <sup>3</sup>(a) on the day in April each year on which increases under section 150(1)(c) of the Administration Act come into force if that is the first day of a benefit week but if it is not from the next following such day; and◄
- (b) by an amount produced by applying to the assessed amount the same percentage increase as that applied for the purposes of additional pensions under section 150(1)(c) and 151(1) of the Administration Act.

<sup>3</sup>Reg. 10(6)(a) substituted by reg. 3(3) of S.I. 2004/647 as from 5.4.04.

(7) Where the assessed amount comprises income from capital, it shall be deemed to increase or decrease

- (a) on the first day of the next benefit week to commence ►<sup>4</sup>on or after◄ the day on which the income increases or decreases; and
- (b) by an amount equal to the change in the claimant’s income produced by applying to his income changes made to the yields capital is deemed to produce, or to the capital amounts, specified in regulation 15(6), or to both if both are changed.

<sup>4</sup>Words in reg. 10(7)(a) substituted by reg. 23(e) of S.I. 2002/3019 as from 6.10.03.

(8) ►<sup>5</sup>◄

<sup>5</sup>Reg. 10(8) omitted by reg. 14(3) of S.I. 2006/2378 as from 2.10.06.

## Regs. 11-13B

<sup>1</sup>Reg. 11 renumbered 11(1) and para. (2) inserted by reg. 6(4) of S.I. 2010/641. See reg. 1 to this S.I. for relevant effective date.

**Retirement provision in assessed income period**

**11.**<sup>1</sup>—(1)◀ Where an element of a person's retirement provision ceases to be payable by one source but—

- (a) responsibility for that element is assumed by another source, income from both those sources shall be treated as income from the same source; or
- (b) in consequence of that element ceasing, income of a different description becomes payable from a different source, that income shall be treated as income of the same description from the same source as the element which ceased to be payable.

▶<sup>1</sup>(2) For the purposes of section 7(6) (meaning of retirement provision) of the Act, a foreign state retirement pension is to be treated as a benefit under the 1992 Act.◀

**End of assessed income period**

<sup>2</sup>Words in reg. 12 omitted, inserted & sub-para. (d) added by reg. 2(3) of S.I. 2015/1529 as from 6.4.16.

**12.** An assessed income period shall end ▶<sup>2</sup>◀—

- (a) ▶<sup>2</sup>at such time as◀ the claimant no longer satisfies a condition of entitlement to state pension credit;
- (b) ▶<sup>2</sup>at such time as◀ payments of an element of the claimant's retirement provision which is due to be paid to him stops temporarily or the amount paid is less than the amount due and in consequence his award of state pension credit is superseded under section 10 of the Social Security Act 1998(a);
- (c) ▶<sup>2</sup>at such time as◀ a claimant who has no partner is provided with accommodation in a care home ▶<sup>3</sup>or independent hospital◀ other than on a temporary basis▶<sup>2</sup>;
- (d) if, apart from this sub-paragraph, it would have ended on a date falling within the period specified in column 1 of the table in Schedule IIIA, on the corresponding date shown against that period in column 2 of that table◀

<sup>3</sup>Words inserted in reg. 12(c) by para. 3 of Sch. 5 to S.I. 2005/2687 as from 24.10.05.

**Small amounts of state pension credit**

**13.**—Where the amount of state pension credit payable is less than 10 pence per week, the credit shall not be payable unless the claimant is in receipt of another benefit payable with the credit.

**▶<sup>4</sup>Part-weeks**

<sup>4</sup>Regs. 13A & 13B inserted by reg. 23(f) of S.I. 2002/3019 as from 6.10.03.

**13A.**—(1) The guarantee credit shall be payable for a period of less than a week ("a part-week") at the rate specified in paragraph (3) if—

- (a) the claimant was entitled to ▶<sup>5</sup>universal credit◀, income support▶<sup>6</sup>, an income-related employment and support allowance◀ or an income-based jobseeker's allowance immediately before the first day on which the conditions for entitlement to the credit are satisfied; and
- (b) the claimant's entitlement to the credit is likely to continue throughout the first full benefit week which follows the part-week.

<sup>5</sup>Words in reg. 13A(1)(a) inserted by reg. 33(4) of S.I. 2013/630 as from 29.4.13.

<sup>6</sup>Words inserted in reg. 13A(1)(a) by reg. 4(4) of S.I. 2008/1554 as from 27.10.08.

<sup>7</sup>Reg. 13A(2) & words in para. (3)(a) & (3)(c) omitted by reg. 3(3)(a)-(c) of S.I. 2009/3229 as from 6.4.10.

(2) ▶<sup>7</sup>◀

(3) The amount of the guarantee credit payable in respect of the part-week shall be determined—

- (a) by dividing by 7 the weekly amount of the guarantee credit which ▶<sup>7</sup>◀ would be payable in respect of a full week; and then
- (b) multiplying the resulting figure by the number of days in the part-week,
- (c) ▶<sup>7</sup>◀

**Date on which benefits are treated as paid**

**13B.**—(1) The following benefits shall be treated as paid on the day of the week in respect of which the benefit is payable—

- (a) 1998 c. 14.



- (a) severe disablement allowance;
- (b) short-term and long-term incapacity benefit;
- (c) maternity allowance;

*The following regulation 13B(1)(d) continues to be reproduced as it is maintained in force in certain circumstances. See Explanatory Note of S.I. 2013/630 for when to apply.*

- (d) contribution-based jobseeker's allowance within the meaning of section 1(4) of the Jobseekers Act 1995(a);
- (d) contribution-based jobseeker's allowance ►<sup>1</sup>◄;
- <sup>2</sup>(e) contributory employment and support allowance.◄
- <sup>3</sup>(2) All benefits except those mentioned in paragraph (1) shall be treated as paid—
  - (a) where the benefit is paid in advance, on the first day of the benefit week in which the benefit is payable;
  - (b) where the benefit is paid in arrears, on the last day of the benefit week in which the benefit is payable.◄

<sup>1</sup>Words in reg. 13B(1)(d) omitted by reg. 33(5) of S.I. 2013/630 as from 29.4.13.

<sup>2</sup>Sub-para. (e) inserted in reg. 13B(1) by regs. 4(5) of S.I. 2008/1554 as from 27.10.08.

<sup>3</sup>Reg. 13B(2) substituted by reg. 3(4) of S.I. 2009/3229 as from 6.4.10.

## PART III

### *Income*

#### Calculation of income and capital

##### 14. The income and capital of—

- (a) the claimant; and
- (b) any partner of the claimant,

shall be calculated in accordance with the rules set out in this Part; and any reference in this Part to the claimant shall apply equally to any partner of the claimant.

#### Income for the purposes of the Act

15.—(1) For the purposes of section 15(1)(e) (income), all social security benefits are prescribed except—

- (a) disability living allowance;
- <sup>4</sup>(aa) personal independence payment;◄
- <sup>5</sup>(ab) armed forces independence payment;◄
  - (b) attendance allowance payable under section 64 of the 1992 Act;
  - (c) an increase of disablement pension under section 104 or 105 of the 1992 Act;
  - (d) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part II of Schedule 8 to the 1992 Act(b);
  - (e) an increase of an allowance payable in respect of constant attendance under paragraph 4 of Part I of Schedule 8 to the 1992 Act;
  - (f) any child special allowance payable under section 56 of the 1992 Act;
  - (g) any guardian's allowance payable under section 77 of the 1992 Act;
  - (h) any increase for a dependant, other than the claimant's partner, payable in accordance with Part IV of the 1992 Act;
  - (i) any social fund payment made under Part VIII of the 1992 Act;
  - (j) child benefit payable in accordance with Part IX of the 1992 Act;
  - (k) Christmas bonus payable under Part X of the 1992 Act;
- <sup>6</sup>(l) housing benefit;
- (m) ►<sup>7</sup>◄
- (n) bereavement payment(c);

<sup>4</sup>Reg. 15(1)(aa), inserted by para. 27(3) of Sch. to S.I. 2013/388 as from 8.4.13.

<sup>5</sup>Reg. 15(1)(ab) inserted by para. 23(3) of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>6</sup>In reg. 15(1), sub-para. (l) to (s) substituted for (l) by reg. 23(a) of S.I. 2002/3019 as from 6.10.03.

<sup>7</sup>Reg. 15(1)(m) revoked by Sch. 1 of S.I. 2013/458 as from 1.4.13.

(a) 1995 c. 18.

(b) See in particular para. 7(2)(b) of Sch. 8.

(c) Bereavement payment was introduced by section 54(1) of the Welfare Reform and Pensions Act 1999 (c. 30).

## Reg. 15

<sup>1</sup>Reg. 15(1)(q) substituted by reg. 5(3) of S.I. 2012/757 as from 1.4.12.

<sup>2</sup>Reg. 15(1)(qa) omitted & sub-para. (qb) inserted by reg. 10(3) of S.I. 2014/3255. See reg. 1(2) & (3) of this S.I. for commencement dates.

<sup>3</sup>Reg. 15(2) substituted by reg. 6(5) of S.I. 2010/641. See reg. 1 to this S.I. for relevant effective date.

<sup>4</sup>Reg. 15(4)(b) substituted by reg. 8(3) of S.I. 2005/3360 as from 10.4.06.

<sup>5</sup>Sub-para. (d) added to reg. 15(4) by reg. 4(6) of S.I. 2008/1554 as from 27.10.08.

<sup>6</sup>Reg. 15(5)(a), words in sub-para. (ab) substituted & sub-para. (ac) inserted by reg. 4(3)(a)-(c) of S.I. 2008/3157 as from 5.1.09.

<sup>7</sup>Reg. 15(5)(aa) & (ab) inserted by reg. 2(2) of S.I. 2005/574 as from 4.4.05.

- (o) statutory sick pay;
- (p) statutory maternity pay;
- ▶<sup>1</sup>(q) ordinary statutory paternity pay payable under Part 12ZA of the 1992 Act(a);
- (qa) ▶<sup>2</sup>◀◀
- ▶<sup>2</sup>(qb) statutory shared parental pay payable under Part 12ZC of the 1992 Act;◀
- (r) statutory adoption pay payable under Part 12ZB of the 1992 Act(b);
- (s) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland.◀
- ▶<sup>3</sup>(2) For the purposes of section 15(1)(f) (foreign social security benefits) of the Act, income includes–
  - (a) all foreign social security benefits which are similar to the social security benefits prescribed under paragraph (1), and
  - (b) any foreign state retirement pension.◀

(3) Where the payment of any social security benefit prescribed under paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (4)) the amount to be taken into account under paragraph (1) shall be the amount before the deduction is made.

- (4) The adjustments specified in this paragraph are those made in accordance with–
  - (a) the Social Security (Overlapping Benefits) Regulations 1979(c);
  - ▶<sup>4</sup>(b) regulation 2 of the Social Security (Hospital In-Patients) Regulations 2005(d);◀
  - (c) section 30DD or section 30E of the 1992 Act(e) (reductions in incapacity benefit in respect of pensions and councillor's allowances).
  - ▶<sup>5</sup>(d) section 3 of the Welfare Reform Act (deductions from contributory allowance).◀

(5) For the purposes of section 15(1)(j) (income to include income of prescribed descriptions), income of the following descriptions is prescribed–

- ▶<sup>6</sup>(a) a payment made–
  - (i) under article 30 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(f), in any case where article 30(1)(b) applies; or
  - (ii) under article 12(8) of that Order, in any case where sub-paragraph (b) of that article applies;◀
- ▶<sup>7</sup>(aa) a guaranteed income payment;
- (ab) a payment made under article 21(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005▶<sup>6</sup>, in any case where article 23(2)(c) applies;◀◀
- ▶<sup>6</sup>(ac) any retired pay, pension or allowance granted in respect of disablement or any pension or allowance granted to a widow, widower or surviving civil partner in respect of a death due to service or war injury under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003(g), where such payment does not fall within paragraph (a) of the definition of "war disablement pension" in section 17(1) of the State Pension Credit Act 2002 or, in respect of any retired pay or pension granted in respect of disablement, where such payment does not fall within paragraph (b) of that definition;◀
- (b) 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;

(a) Part 12ZA of the Social Security Contributions and Benefits Act 1992 is inserted by section 2 of the Employment Act 2002 (c. 22).

(b) Part 12ZB was inserted by s. 4 of the Employment Act 2002.

(c) S.I. 1979/597.

(d) S.I. 2005/3360.

(e) Sections 30DD and 30E were inserted by s. 3(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

(f) S.I. 2006/606.

(g) 2003 c. 1 subsection (2) was inserted into section 639 by section 19(4) of the Finance Act 2005 (c. 7).

- (c) payments under a scheme made under the Pneumoconiosis etc. (Worker's Compensation) Act 1979(a);
- (d) payments made towards the maintenance of the claimant by his spouse<sup>1</sup>, civil partner, former spouse or former civil partner<sup>2</sup> or towards the maintenance of the claimant's partner by his spouse<sup>1</sup>, civil partner, former spouse or former civil partner<sup>2</sup>, including payments made—
- (i) under a court order;
  - (ii) under an agreement for maintenance; or
  - (iii) voluntarily;
- (e) payments due from any person in respect of board and lodging accommodation provided by the claimant; <sup>2</sup>◀
- ▶<sup>3</sup>(f) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark;◀
- ▶<sup>3</sup>(g) any payment in respect of any—
- (i) book registered under the Public Lending Right Scheme 1982; or
  - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982;◀
- ▶<sup>4</sup>(h) any income in lieu of that specified in—
- (i) paragraphs (a) to (i) of section 15(1) of the Act, or
  - (ii) in this regulation;
- (i) any payment of rent made to a claimant who—
- (i) owns the freehold or leasehold interest in any property or is a tenant of any property;
  - (ii) occupies part of that property; and
  - (iii) has an agreement with another person allowing that person to occupy that property on payment of rent;◀
- ▶<sup>5</sup>(j) any payment made at regular intervals under an equity release scheme◀
- ▶<sup>6</sup>(k) PPF periodic payments(b).◀
- ▶<sup>7</sup>(6) For the purposes of section 15(2) (deemed income from capital) and subject to regulation 17(8) (capital to be disregarded), a claimant's capital shall be deemed to yield a weekly income of—
- (a) £1 for each £500 in excess of £10,000; and
  - (b) £1 for any excess which is not a complete £500.◀
- (7)-(8) ▶<sup>7</sup>◀

<sup>1</sup>Words substituted in para. 5(d) of reg. 15 by para. 35(3) of Sch. 3 to S.I. 2005/2897 as from 5.12.05.

<sup>2</sup>Words omitted in reg. 15(5)(e) by reg. 6(3) of S.I. 2005/2468 as from 3.10.05.

<sup>3</sup>Reg 15(5)(f) & (g) substituted by reg 5(2) (a) & (b) of S.I. 2009/583 as from 6.4.09.

<sup>4</sup>Sub-para. (h) inserted by reg. 2(7)(b) of S.I. 2003/2274 as from 6.10.03.

<sup>5</sup>Sub-para. (j) inserted by reg. 7(3) of S.I. 2004/2327 as from 4.10.04.

<sup>6</sup>Reg. 15(5)(k) inserted by reg. 4(2) of S.I. 2006/588 as from 6.4.06.

<sup>7</sup>In reg. 15, para. (6) substituted and paras. (7) & (8) deleted by reg. 3(2) & (3) of S.I. 2009/1676 as from 2.11.09.

<sup>8</sup>Words substituted in reg. 16 and (k) & insert (l) added by para. 4 of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>9</sup>Sub-para. (m) inserted by reg. 7(4) of S.I. 2004/2327 as from 4.10.04.

<sup>10</sup>Sub-para. (n) inserted in reg. 16 by reg. 2(3) of S.I. 2005/3205 as from 18.12.05.

### Retirement pension income

16. There shall be added to the descriptions of income listed in section 16(1) (retirement pension income) the following ▶<sup>8</sup>paragraphs◀—

“(k) any sum payable by way of pension out of money provided under the Civil List Act 1837(c), the Civil List Act 1937(d), the Civil List Act 1952(e), the Civil List Act 1972(f) or the ▶<sup>8</sup>Civil List Act 1975◀(g)▶<sup>8</sup>;

(l) any payment, other than a payment ordered by a court or made in settlement of a claim, made by or on behalf of a former employer of a person on account of the early retirement of that person on grounds of ill-health or disability◀”

▶<sup>9</sup>(m) any payment made at regular intervals under an equity release scheme.◀

▶<sup>10</sup>(n) any payment made under the Financial Assistance Scheme Regulations 2005(h)◀

(a) 1979 c. 41; amended by s. 24 of the Social Security Act 1985 (c. 53).

(b) PPF periodic payments are defined in section 17(1) of the State Pension Credit Act 2002 as amended by S.I. 2006/343.

(c) 1837 c. 2.

(d) 1937 c. 32.

(e) 1952 c. 37.

(f) 1972 c. 7.

(g) 1975 c. 82.

(h) S.I. 2005/1986.

## Reg. 17

**Calculation of weekly income**

17.—(1) Except where paragraph (2) and (4) apply, for the purposes of calculating the weekly income of the claimant, where the period in respect of which a payment is made—

- (a) does not exceed a week, the whole of that payment shall be included in the claimant's weekly income;
- (b) exceeds a week, the amount to be included in the claimant's weekly income shall be determined—
  - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
  - (ii) in a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
  - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
  - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number of days in the period in respect of which it is made.

(2) Where—

- (a) the claimant's regular pattern of work is such that he does not work the same hours every week; or
- (b) the amount of the claimant's income fluctuates and has changed more than once, the weekly amount of that claimant's income shall be determined—
  - (i) if, in a case to which sub-paragraph (a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences); or
  - (ii) in any other case, on the basis of—
    - (aa) the last two payments if those payments are one month or more apart;
    - (bb) the last four payments if the last two payments are less than one month apart; or
    - (cc) such other payments as may, in the particular circumstances of the case, enable the claimant's average weekly income to be determined more accurately.

(3) For the purposes of paragraph (2)(b) the last payments are the last payments before the date the claim was made or treated as made or, if there is a subsequent supersession under section 10 of the Social Security Act 1998(a), the last payments before the date of the supersession.

(4) If a claimant is entitled to receive a payment to which paragraph (5) applies, the amount of that payment shall be treated as if made in respect of a period of a year.

(5) This paragraph applies to—

- ▶<sup>1</sup>(a) royalties or other sums received as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark;◀
- ▶<sup>1</sup>(b) any payment in respect of any—
  - (i) book registered under the Public Lending Right Scheme 1982; or
  - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982;◀▶<sup>2</sup>and
- (c) any payment which is made on an occasional basis.◀

(6) Where payments are made in a currency other than Sterling, the value of the payment shall be determined by taking the Sterling equivalent on the date the payment is made.

<sup>1</sup>Paras. (5)(a) & (b) substituted by reg. 5(3)(a)-(b) of S.I. 2009/583 as from 6.4.09.

<sup>2</sup>In reg. 17, para. (5)(c) added by reg 23(h) of S.I. 2002/3019 as from 6.10.03.

(a) 1998 c. 14.

(7) Income specified in Schedule IV is to be disregarded in the calculation of a claimant's income.

(8) Schedule V shall have effect so that—

- (a) the capital specified in Part I shall be disregarded for the purpose of determining a claimant's income; and
- (b) the capital specified in Part II shall be disregarded for the purpose of determining a claimant's income under regulation 15(6).

▶<sup>1</sup>(9) The sums specified in Schedule VI shall be disregarded in calculating—

- (a) the claimant's earnings; and
- ▶<sup>2</sup>(b) any amount to which paragraph (5) applies where the claimant is the first owner of the copyright, design, patent or trade mark, or an original contributor to the book or work referred to in paragraph (5)(b).◀

<sup>1</sup>Paras. (9) & (9A) substituted for (9) by reg. 23(h) of S.I. 2002/3019 as from 6.10.03.

<sup>2</sup>Para. (9)(b) substituted by reg. 5(3)(c) of S.I. 2009/583 as from 6.4.09.

(9A) For the purposes of paragraph (9)(b), and for that purpose only, the amounts specified in paragraph (5) shall be treated as though they were earnings.◀

(10) ▶<sup>3</sup>Subject to regulation ▶<sup>4</sup>17B(6)◀ (deduction of tax and contributions for self-employed earners),◀ in the case of any income taken into account for the purpose of calculating a person's income, there shall be disregarded—

<sup>3</sup>Words inserted in para. (10) & para. (11) inserted by reg. 23(h) of S.I. 2002/3019 as from 6.10.03.

- (a) any amount payable by way of tax;
- (b) any amount deducted by way of National Insurance Contributions under the 1992 Act or under the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a);
- (c) ▶<sup>4</sup>◀

<sup>4</sup>Words in reg. 17(10) substituted & sub-para. (c) omitted by para. 5 of the Sch. to S.I. 2002/3197 as from 6.10.03.

▶<sup>3</sup>(11) In the case of the earnings of self-employed earners, the amounts specified in paragraph (10) shall be taken into account in accordance with paragraph (4) or, as the case may be, paragraph (10) of regulation 13 of the Computation of Earnings Regulations, as having effect in the case of state pension credit.◀

#### ▶<sup>5</sup>Treatment of final payments of income

<sup>5</sup>Reg. 17ZA inserted by reg. 3(4) of S.I. 2004/647 as from 5.4.04.

**17ZA.**—(1) Save where regulation 13B(b) applies, this regulation applies where—

- (a) a claimant has been receiving a regular payment of income;
- (b) that payment is coming to an end or has ended; and
- (c) the claimant receives a payment of income whether as the last of the regular payments or following the last of them (“the final payment”).

(2) For the purposes of regulation 17(1)—

- (a) where the amount of the final payment is less than or equal to the amount of the preceding, or the last, regular payment, the whole amount shall be treated as being paid in respect of a period of the same length as that in respect of which that regular payment was made;
- (b) where the amount of the final payment is greater than the amount of that regular payment—
  - (i) to the extent that it comprises (whether exactly or with an excess remaining) one or more multiples of that amount, each such multiple shall be treated as being paid in respect of a period of the same length as that in respect of which that regular payment was made; and
  - (ii) any excess shall be treated as paid in respect of a further period of the same length as that in respect of which that regular payment was made.

(3) A final payment referred to in paragraph (2)(a) shall, where not in fact paid on the date on which a regular payment would have been paid had it continued in payment, be treated as paid on that date.

(a) 1992 c. 7.

(b) Regulation 13B was inserted by S.I. 2002/3019.

## Regs. 17A-17A

(4) Each multiple and any excess referred to in paragraph (2)(b) shall be treated as paid on the dates on which a corresponding number of regular payments would have been made had they continued in payment.

(5) For the purposes of this regulation, a “regular payment” means a payment of income made in respect of a period—

- (a) referred to in regulation 17(1)(a) or (b) on a regular date; or
- (b) which is subject to the provisions of regulation 17(2).◀

<sup>1</sup>Regs. 17A & 17B inserted by reg. 23(i) of S.I. 2002/3019 as from 6.10.03.

▶<sup>1</sup>Earnings of an employed earner

**17A.**—(1) For the purposes of state pension credit, the provisions of this regulation which relate to the earnings of employed earners, shall have effect in place of those prescribed for such earners in the Computation of Earnings Regulations.

(2) Subject to paragraphs ▶<sup>2</sup>(3), (4) and (4A)◀, “earnings” in the case of employment as an employed earner, means 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 claimant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay;
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant’s employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant’s employer in respect of—
  - (i) travelling expenses incurred by the claimant between his home and place of employment;
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant’s absence from home;
- (g) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person’s earnings in accordance with Part V of Schedule 3 to the Social Security (Contributions) Regulations 2001(a);
- (h) statutory sick pay and statutory maternity pay payable by the employer under the 1992 Act;

▶<sup>3</sup>(i) ▶<sup>4</sup>◀ statutory paternity pay payable under Part 12ZA of the 1992 Act;

(ia) ▶<sup>4</sup>◀◀

▶<sup>4</sup>(ib) statutory shared parental pay payable under Part 12ZC of the 1992 Act;◀

- (j) statutory adoption pay payable under Part 12ZB of the 1992 Act;
- (k) any sums payable under a contract of service—
  - (i) for incapacity for work due to sickness or injury; or
  - (ii) by reason of pregnancy or confinement.

(3) “Earnings” shall not include—

- (a) subject to paragraph (4), 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;
- (d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme(b)▶<sup>5</sup>;

<sup>2</sup>Words in reg. 17A(2) substituted by reg. 3(1)(a) of S.I. 2002/3197. See reg. 1(1) to this S.I. for when to apply.

<sup>3</sup>Reg. 17A(2)(i) substituted & (ia) inserted by reg. 5(4) of S.I. 2012/757 as from 1.5.12.

<sup>4</sup>Words in reg. 17A(2)(i) & sub-para. (ia) omitted & sub-para. (ib) inserted by reg. 10(4) of S.I. 2014/3255. See reg. 1(2) & (3) of this S.I. for commencement dates.

<sup>5</sup>Sub-para. (e) added to reg. 17A(3) by reg. 3(1)(b) of S.I. 2002/3197 as from 6.10.03.

(a) S.I. 2001/1004.

(b) The Scheme is set out in reg. 4 of, and the Sch. to, The European Communities (Iron and Steel Employees Re-adaptation Benefits Scheme) (No. 2) (Amendment) Regs. 1996 (S.I. 1996/3182).

(e) any payment of compensation made pursuant to an award by an employment tribunal in respect of unfair dismissal or unlawful discrimination.◀

▶<sup>1</sup>(f) any payment in respect of expenses arising out of the ▶<sup>2</sup>claimant participating as a service user.◀◀

(4) Paragraph (3)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (2)(g).

▶<sup>3</sup>(4A) One half of any sum paid by a claimant by way of a contribution towards an occupational pension scheme or a personal pension scheme shall, for the purpose of calculating his earnings in accordance with this regulation, be disregarded.◀

(5) In this regulation “employed earner” means a person who is gainfully employed in Great Britain either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule◀.

<sup>1</sup>Reg. 17A(3)(f) inserted by reg. 5(3) of S.I. 2009/2655. See reg.

1(2)(c) to this S.I. for the relevant commencement date.

<sup>2</sup>Words in reg. 17A(3)(f) substituted by reg. 7(3) of S.I. 2014/591 as from 28.4.14.

<sup>3</sup>Para. (4A) inserted in reg. 17A by reg. 3(1)(c) of S.I. 2002/3197 as from 6.10.03.





**Earnings of self-employed earners**

**17B.**—(1) For the purposes of state pension credit, the provisions of the Computation of Earnings Regulations in their application to the earnings of self-employed earners, shall have effect in so far as provided by this regulation.

(2) In their application to state pension credit, regulations 11 to 14 of the Computation of Earnings Regulations shall have effect as if—

▶<sup>1</sup>(za) “board and lodging accommodation” has the same meaning as in ▶<sup>2</sup>regulation 1(2)◀◀

- (a) “claimant” referred to a person claiming state pension credit and any partner of the claimant;
- (b) “personal pension scheme” referred to a personal pension scheme—
  - (i) as defined in section 1 of the Pension Schemes Act 1993(a); or
  - (ii) as defined in section 1 of the Pension Schemes (Northern Ireland) Act 1993(b).

(3) In regulation 11 (calculation of earnings of self-employed earners), paragraph (1) shall have effect, but as if the words “Except where paragraph (2) applies” were omitted.

(4) In regulation 12 (earnings of self-employed earners)—

- (a) paragraph (1) shall have effect;
- ▶<sup>3</sup>(b) the following paragraph shall be added after paragraph (1)◀—

“(2) Earnings does not include—

- (a) where a claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation for which payment is made, those payments;
- ▶<sup>3</sup>(b) any payment made by a local authority to a claimant with whom a person is accommodated by virtue of arrangements made under—
  - (i) section 23(2)(a) of the Children Act 1989 (provision of accommodation and maintenance for a child whom they are looking after)
  - (ii) section 26 of the Children (Scotland) Act 1995 (manner of provision of accommodation to child looked after by local authority), or
  - (iii) regulations 33 to 51 of the Looked After Children (Scotland) Regulations 2009 (fostering and kinship care allowances and fostering allowances);◀
- (c) any payment made by a voluntary organisation in accordance with section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations);
- (d) any payment made to the claimant or his partner for a person (“the person concerned”) who is not normally a member of the claimant’s household but is temporarily in his care, by—
  - (i) a health authority;
  - (ii) a local authority;
  - (iii) a voluntary organisation;
  - (iv) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948(c); ▶<sup>4</sup>◀
  - ▶<sup>5</sup>(iva) a clinical commissioning group established under section 14D of the National Health Service Act 2006;
  - (ivb) the National Health Service Commissioning Board; or◀
  - ▶<sup>4</sup>(vi) a Local Health Board established under section 16BA of the National Health Service Act 1977 or established by an order made under section 11 of the Health Service (Wales) Act;◀

<sup>1</sup>Sub-para (za) inserted in reg. 17B(2) by reg. 3(2)(a) of S.I. 2002/3197 as from 6.10.03.

<sup>2</sup>Words in reg. 17B(2)(za) substituted by reg. 6(4) of S.I. 2005/2465 as from 3.10.05.

<sup>3</sup>Words in reg. 17B(4)(b) substituted by reg. 6 of S.I. 2010/2429 as from 1.11.10.

<sup>4</sup>Word “or” omitted, in “substituted” para. (2)(d)(iv), substituted sub-para. (vi) added by reg. 4(4)(a)-(c) of S.I. 2008/3157 as from 5.1.09.

<sup>5</sup>Sub-paras. (iva) & (ivb) & sub-para. (v) omitted in the added para. (2)(d) detailed in reg. 17B(4)(b) by para. 54(3)(a) & (b) of Sch. 2 to S.I. 2013/235 as from 1.4.13.

(a) 1993 c. 48.

(b) 1993 c. 49.

(c) 1948 c. 29; s. 26(3A) was inserted by the National Health Service and Community Care Act 1990 (c. 19).

## Regs. 17B-18

<sup>1</sup>Words inserted in reg. 12(2)(e) of the insertion in (4)(b) of reg. 17B by reg. 3(2)(b) of S.I. 2002/3197 as from 6.10.03.

(e) any sports award ►<sup>1</sup>being an award made by one of the Sports Councils named in s. 23(2) of the National Lottery etc. Act 1993(a) out of sums allocated to it for distribution under that section◀<sup>1</sup>”.

(5) In regulation 13 (calculation of net profit of self-employed earners)–

(a) for paragraphs (1) to (3), the following provision shall have effect–

“(1) For the purposes of regulation 11 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account shall be–

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership, 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 Contributions and Benefits Act calculated in accordance with regulation 14 (deduction of tax and contributions for self-employed earners); and
  - (ii) one half of any premium paid in the period that is relevant under regulation 11 in respect of a retirement annuity contract or a personal pension scheme.”;

(b) paragraphs (4) to (12) shall have effect.

(6) Regulation 14 (deduction of tax and contributions for self-employed earners) shall have effect.◀

**Notional income**

<sup>2</sup>Reg. 18(1) substituted by reg. 14(4)(a) of S.I. 2006/2378 as from 1.10.06.

**18.**—►<sup>2</sup>(1) A claimant who has attained the qualifying age shall be treated as possessing the amount of any retirement pension income–

- (a) to which section 16(1)(a) to (e) applies,
- (b) for which no claim has been made, and
- (c) to which the claimant might expect to be entitled if a claim for it were made,

but only from the date on which that income could be expected to be acquired if a claim for it were made.

<sup>3</sup>Words in para. (1A) and para. (1C) substituted by reg. 10(3) of S.I. 2007/2618 as from 10.9.07.

(1A) Paragraph (1) is subject to paragraphs (1B) and►<sup>3</sup>, (1CA) and (1CB)◀.

(1B) Where a claimant–

- (a) has deferred entitlement to retirement pension income to which section 16(1)(a) to (c) applies for at least 12 months, and
- (b) would have been entitled to make an election under Schedule 5 or 5A(b) to the 1992 Act or under Schedule 1 to the Graduated Retirement Benefit Regulations,

he shall be treated for the purposes of paragraph (1) as possessing the amount of retirement pension income to which he might expect to be entitled if he were to elect to receive a lump sum.

►<sup>3</sup>(1C) Paragraphs (1CA) and (1CB) apply for the purposes of paragraph (1) (or, where applicable, paragraph (1) read with paragraph (1B)).

(1CA) Where a benefit or allowance in payment in respect of the claimant would be adjusted under the Social Security (Overlapping Benefits) Regulations 1979(c) if the retirement pension income had been claimed, he shall be treated as possessing that income minus the benefit or allowance in payment.

(a) 1993 c. 39.

(b) Schedule 5A was inserted by Schedule 11 to the Pensions Act 2004 (c. 35).

(c) S.I. 1979/597.

(ICB) Where a benefit or allowance in payment in respect of the claimant would require an adjustment to be made under the Social Security (Overlapping Benefits) Regulations 1979 to the amount of retirement pension income payable had it been claimed, he shall be treated as possessing that retirement pension income minus the adjustment which would be made to it. ◀

(1D) A claimant who has attained the qualifying age shall be treated as possessing income from an occupational pension scheme which he elected to defer, but only from the date on which it could be expected to be acquired if a claim for it were made. ◀

(2) Where a person, ▶<sup>1</sup>who has attained the qualifying age◀, is a person entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

<sup>1</sup>Words in reg. 18(2) substituted by reg. 6(6) of S.I. 2010/641. See reg. 1 to this S.I. for relevant effective date.

- (a) 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.

(3) The amount of any income foregone in a case to which either head (i) or (ii) of paragraph (2)(a) applies shall be the maximum amount of income which may be withdrawn from the fund.

(4) The amount of any income foregone in a case to which either head (iii) of paragraph (2)(a) or paragraph (2)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant scheme or retirement annuity contract been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (3).

(5) In paragraph (2), “money purchase benefits” has the meaning it has in the Pensions Scheme Act 1993(a).

(6) ▶<sup>2</sup>Subject to ▶<sup>3</sup>the following paragraphs◀◀ a person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to state pension credit or increasing the amount of that benefit.

<sup>2</sup>Words in reg. 18(6) & regs. 18(7) & (8) inserted by reg. 13(3)(a) & (b) of S.I. 2005/2677 as from 6.4.06.

▶<sup>2</sup>(7) Paragraph (6) shall not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A to the 1992 Act(b) or under Schedule 1 to the Graduated Retirement Benefit Regulations, changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.

<sup>3</sup>In reg. 18, words substituted in para. (6) & para. (7A) inserted by reg. 5(4)(a) & (b) of S.I. 2009/2655. See reg. 1(2)(c) to this S.I. for the relevant commencement date.

▶<sup>3</sup>(7A) Paragraph (6) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the ▶<sup>4</sup>claimant participating as a service user.◀◀

<sup>4</sup>Words in reg. 18(7A) substituted by reg. 7(4) of S.I. 2014/591 as from 28.4.14.

(8) In paragraph (7), “lump sum” means a lump sum under Schedule 5 or 5A to the 1992 Act or under Schedule 1 to the Graduated Retirement Benefit Regulations.◀

▶<sup>5</sup>(9) For the purposes of paragraph (6), a person is not to be regarded as depriving himself of income where—

<sup>5</sup>Reg. 18(9) & (10) added by reg. 14(4)(b) of S.I. 2006/2378 as from 1.10.06.

(a) 1993 c. 48; see s. 181(1) of that Act.

(b) Schedule 5A is inserted by paragraph 15 of Schedule 11 to the Pensions Act 2004 (c. 35).

## Regs. 18-21

- (a) his rights to benefits under a registered pension scheme are extinguished and in consequence of this he receives a payment from the scheme, and
- (b) that payment is a trivial commutation lump sum within the meaning given by paragraph 7 of Schedule 29 to the Finance Act 2004<sup>(a)</sup>.

(10) In paragraph (9), “registered pension scheme” has the meaning given in section 150(2) of the Finance Act 2004.◀

<sup>1</sup>Reg. 19 substituted by reg. 10(4) of S.I. 2007/2618 as from 10.9.07.

▶<sup>1</sup>Calculation of capital in the United Kingdom

**19.** Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

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

## Calculation of capital outside the United Kingdom

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

- (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 encumbrance secured on it.

## Notional capital

<sup>2</sup>Para. (1) of reg. 21 substituted by para. 6 of the Sch. to S.I. 2002/3197 as from 6.10.03.

**21.—**▶<sup>2</sup>(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to state pension credit or increasing the amount of that benefit except to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 22 (diminishing notional capital rule).◀

<sup>3</sup>Reg. 21(2) substituted by reg. 3(5) of S.I. 2004/647 as from 5.4.04.

▶<sup>3</sup>(2) A person who disposes of a capital resource for the purpose of—

- (a) reducing or paying a debt owed by the claimant; or
- (b) purchasing goods or services if the expenditure was reasonable in the circumstances of the claimant’s case,

shall be regarded as not depriving himself of it.◀

<sup>4</sup>Paras. (3) & (4) inserted in reg. 21 by reg. 23(j) of S.I. 2002/3019 as from 6.10.03.

▶<sup>4</sup>(3) Where a claimant 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 shall be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 19 (calculation of capital), be disregarded; and
- (b) he shall, subject to paragraph (4), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(4) For so long as a claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (3) shall be disregarded.◀

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(a) 2004. c. 12.

►<sup>1</sup>(5) Where under this regulation a person is treated as possessing capital, the amount of that capital shall be calculated in accordance with the provisions of this Part as if it were actual capital which he does possess.◄

<sup>1</sup>Para. (5) inserted in reg. 21 by reg. 23(j) of S.I. 2002/3019 as from 6.10.03.

### Diminishing notional capital rule

22.—(1) Where a claimant is treated as possessing capital under regulation 21(1) (notional capital), the amount which he is treated as possessing—

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

shall be reduced by the amount determined under paragraph (3).

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

- (a) he is in receipt of state pension credit; and
- (b) but for regulation ►<sup>2</sup>21(1)◄, he would have received an additional amount of state pension credit in that benefit week;

<sup>2</sup>Words substituted in reg. 22 by para. 7 of the Sch. to S.I. 2002/3197 as from 6.10.03.

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

(3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to state pension credit in the relevant week, but for regulation ►<sup>2</sup>21(1)◄, and in such a case the amount of the reduction shall be equal to the aggregate of—

- (a) the amount of state pension credit to which the claimant would have been entitled in the relevant week but for regulation ►<sup>2</sup>21(1)◄;
- (b) the amount of housing benefit (if any) equal to the difference between his maximum housing benefit and the amount (if any) of housing benefit which he is awarded in respect of the benefit week, within the meaning of regulation 2(1) of the Housing Benefit (General) Regulations 1987(a) (interpretation), which includes the last day of the relevant week;
- (c) the amount of council tax benefit (if any) equal to the difference between his maximum council tax benefit and the amount (if any) of council tax benefit which he is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose “benefit week” ►<sup>3</sup>means a period of 7 consecutive days beginning on a Monday and ending on a Sunday◄

<sup>3</sup>Words substituted in reg. 22(3)(c) by reg. 6 of S.I. 2013/458 as from 1.4.13.

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

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

(a) S.I. 1987/1971.

## Regs. 22-24

<sup>1</sup>Words substituted in reg. 22 by para. 7 of the Sch. to S.I. 2002/3197 as from 6.10.03.

- (5) The conditions are that—
- (a) a further claim is made 26 or more weeks after—
    - (i) the date on which the claimant made a claim for state pension credit in respect of which he was first treated as possessing the capital in question under regulation <sup>1</sup>21(1)~~◀~~; or
    - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which he last made a claim for state pension credit which resulted in the weekly amount being re-determined; or
    - (iii) the date on which he last ceased to be in receipt of state pension credit, whichever last occurred; and
  - (b) the claimant would have been entitled to state pension credit but for regulation <sup>1</sup>21(1)~~◀~~.
- (6) The amount as re-determined pursuant to paragraph (4) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.
- (7) For the purpose of this regulation—
- (a) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation <sup>1</sup>21(1)~~◀~~—
    - (i) was first taken into account for the purpose of determining his entitlement to state pension credit; or
    - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to state pension credit on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, state pension credit;

and where more than one benefit week is identified by reference to heads (i) and (ii) of this sub-paragraph the later or latest such benefit week;
  - (b) “relevant subsequent week” means the benefit week which includes the day on which the further claim or, if more than one further claim had been made, the last such claim was made.

**Capital jointly held**

**23.** Where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Part shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

**Income paid to third parties**

<sup>2</sup>Words substituted in reg. 24(1) by reg. 15(4)(a) of S.I. 2011/2425 as from 31.10.11.

**24.—**(1) Any payment of income, other than a payment specified in <sup>2</sup>paragraph (2) or (3)~~◀~~, to a third party in respect of the claimant shall be treated as possessed by the claimant.

(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where—

- (a) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, to Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person’s estate under section 41 of the Solicitors (Scotland) Act 1980(a);
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and

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(a) 1980 c. 46.

- (c) the person referred to in sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

▶<sup>1</sup>(3) Paragraph (1) shall not apply in respect of any payment of income arising out of the ▶<sup>2</sup>claimant participating as a service user◀◀

### ▶<sup>3</sup>Rounding of fractions

**24A.** Where any calculation under this Part results in a fraction of a penny that fraction shall, if it would be to the claimant's advantage, be treated as a penny; otherwise it shall be disregarded.◀

[Regulation 25 amends regulation 2 of and inserts regulation 3A into S.I. 2001/3022.]

<sup>1</sup>Reg. 24(3) inserted by reg. 15(4)(b) of S.I. 2011/2425 as from 31.10.11.

<sup>2</sup>Words in reg. 24(3) substituted by reg. 7(5) of S.I. 2014/591 as from 28.4.14.

<sup>3</sup>Reg. 24A inserted by reg. 23(K) of S.I. 2002/3019 as from 6.10.03.

Signed by authority of the Secretary of State for Work and Pensions.

*Ian McCartney*  
Minister of State,

11th July 2002

Department for Work and Pensions

## SCHEDULE 1

Regulation 6(4)

### PART I

#### Circumstances in which persons are treated as being or not being severely disabled

##### Severe disablement

**1.—**(1) For the purposes of regulation 6(4) (additional amounts for persons severely disabled), the claimant is to be treated as being severely disabled if, and only if—

- (a) in the case of a claimant who has no partner—
- (i) he is in receipt of attendance allowance▶<sup>4</sup>, 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 the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78(3) of the 2012 Act◀▶<sup>5</sup>or armed forces independence payment◀; and
  - (ii) no person who has attained the age of 18 is normally residing with the claimant, nor is the claimant normally residing with such a person, other than a person to whom paragraph 2 applies; and
  - (iii) no person is entitled to and in receipt of an allowance under section 70 of the 1992 Act ▶<sup>6</sup>carer's allowance◀▶<sup>7</sup>, or has an award of universal credit which includes the carer element,◀ in respect of caring for him;
- (b) in the case of a claimant who has a partner—
- (i) both partners are in receipt of attendance allowance▶<sup>4</sup>, 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 the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78(3) of the 2012 Act◀▶<sup>5</sup>or armed forces independence payment◀; and
  - (ii) no person who has attained the age of 18 is normally residing with the partners, nor are the partners normally residing with such a person, other than a person to whom paragraph 2 applies;
- and either a person is entitled to, and in receipt of, an allowance under section 70 of the 1992 Act▶<sup>7</sup>, or has an award of universal credit which includes the carer element,◀ in respect of caring for one only of the partners or, as the case

<sup>4</sup>Words substituted in para. 1(a)(i) & (b)(i) by para. 27(4) of Sch. to S.I. 2013/388 as from 8.4.13.

<sup>5</sup>Words inserted in paras. 1(a)(i) & (b)(i) of Sch. 1 by para. 23(4)(a)(i) & (ii) of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>6</sup>Words in para (1)(iii) substituted by reg. 2(8) of S.I. 2003/2274 as from 6.10.03.

<sup>7</sup>Words in para. (1)(a)(iii) & (1)(b) inserted by reg. 16(3)(a) & (b) of S.I. 2015/1754 as from 3.11.15.

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<sup>1</sup>Words in para. (1)(b) inserted by reg. 16(3)(b) of S.I. 2015/1754 as from 3.11.15.

<sup>2</sup>Words substituted & inserted in para. 1(1)(c)(i), (2)(a) & (a)(i) by para. 27(4)(iii)-(iv) of Sch. to S.I. 2013/388 as from 8.4.13.

<sup>3</sup>Words inserted in paras. 1(1)(c)(i) & (2) of Sch. 1 by para. 23(4)(a)(iii) & (iv) of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>4</sup>Para. 1(1)(c)(ii) substituted by reg. 3(4)(a)(i)(aa) of S.I. 2014/2888 as from 26.11.14.

<sup>5</sup>Words in para. 1(1)(c)(iv) inserted by reg. 16(3)(c) of S.I. 2015/1754 as from 3.11.15.

<sup>6</sup>Words in para. 1(2)(b) & 2(6)(a) substituted by para. 8(a) of S.I. 2002/3197 as from 6.10.03.

may be, no person is entitled to, and in receipt of, such an allowance <sup>1</sup>under section 70, or has an award of universal credit which includes the carer element, <sup>4</sup>in respect of caring for either partner;

- (c) in the case of a claimant who has a partner and to whom head (b) does not apply—
- (i) either the claimant or his partner is in receipt of attendance allowance <sup>2</sup>, 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 the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78(3) of the 2012 Act <sup>3</sup>or armed forces independence payment <sup>4</sup>; and
  - <sup>4</sup>(ii) the other partner is certified as severely sight impaired or blind by a consultant ophthalmologist; and <sup>4</sup>
  - (iii) no person who has attained the age of 18 is normally residing with the partners, nor are the partners normally residing with such a person, other than a person to whom paragraph 2 applies; and
  - (iv) no person is entitled to and in receipt of an allowance under section 70 of the 1992 Act <sup>5</sup>, or has an award of universal credit which includes the carer element, in <sup>4</sup>respect of caring for the person to whom head (c)(i) above applies.

(2) A person shall be treated—

- (a) for the purposes of sub-paragraph (1) as being in receipt of attendance allowance <sup>2</sup>, 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 the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78(3) of the 2012 Act <sup>3</sup>or armed forces independence payment <sup>4</sup>, for any period—
  - (i) before an award is made but in respect of which the allowance <sup>2</sup>or payment <sup>4</sup> awarded; or
  - (ii) not covered by an award but in respect of which a payment is made in lieu of an award;
- (b) for the purposes of sub-paragraph (1)(b) as being in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance section <sup>6</sup>72(3) <sup>4</sup>of the 1992 Act if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;



## Sch. 1

- <sup>1</sup>(ba) for the purposes of sub-paragraph (1)(b) as being in receipt of the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78 of the 2012 Act if he would, but for regulations made under section 86(1) (hospital in-patients) of that Act, be so in receipt; ◀
- (c) for the purposes of sub-paragraph (1), as not being in receipt of an allowance under section 70 of the 1992 Act►<sup>2</sup>, or as having an award of universal credit which includes the carer element, ◀ for any period before ►<sup>3</sup>the date on which the award is first paid◀.

<sup>1</sup>Words & para. 1(2)(ba) inserted & words substituted in 2(2)(a) by para. 27(4) of Sch. to S.I. 2013/388 as from 8.4.13.

<sup>2</sup>Words & sub-para. (4) inserted by reg. 16(3)(d) & (e) of S.I. 2015/1754 as from 3.11.15.

<sup>3</sup>Words substituted in para. 1(2)(c) by reg. 4 of S.I. 2007/719 as from 2.4.07.

<sup>4</sup>Paras. 1(3), 2(2)(b) & (c) substituted by reg. 3(4)(a)(i)(bb) & 3(4)(a)(ii) of S.I. 2014/2888 as from 26.11.14.

►<sup>4</sup>(3) For the purposes of sub-paragraph (1)(c)(ii), a person who has ceased to be certified as severely sight impaired or blind on regaining his eyesight shall nevertheless be treated as severely sight impaired or blind, as the case may be, and as satisfying the requirements set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so certified. ◀

►<sup>2</sup>(4) For the purposes of this paragraph, a person has an award of universal credit which includes the carer element if the person has an award of universal credit which includes an amount which is the carer element under regulation 29 of the Universal Credit Regulations 2013. ◀

### Persons residing with the claimant whose presence is ignored

2.—(1) For the purposes of paragraph 1(1)(a)(ii), (b)(ii) and (c)(iii), this paragraph applies to the persons specified in the following sub-paragraphs.

(2) A person who—

- (a) is in receipt of attendance allowance►<sup>2</sup>, 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 the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78(3) of the 2012 Act◀►<sup>3</sup>or armed forces independence payment◀;
- <sup>4</sup>(b) is certified as severely sight impaired or blind by a consultant ophthalmologist; ◀
- <sup>4</sup>(c) is no longer certified as severely sight impaired or blind in accordance with head (b) but was so certified not more than 28 weeks earlier; ◀
- (d) lives with the claimant in order to care for him or his partner and is engaged by a charitable or voluntary organisation which makes a charge to the claimant or his partner for the services provided by that person;
- (e) is a partner of a person to whom head (d) above applies; or
- (f) is a person who is ►<sup>6</sup>a qualifying young person or ◀ child for the purposes of Part IX of the 1992 Act◀(a).

<sup>5</sup>Words inserted in para. 2(2)(a) of Sch. 1 by para. 23(4)(b) of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>6</sup>Words substituted in para. 2(2)(f) of Sch. 1 by reg. 6(3) of S.I. 2006/718 as from 10.4.06.

(3) Subject to sub-paragraph (4), a person who joins the claimant's household for the first time in order to care for the claimant or his partner and immediately before he joined the household, the claimant or his partner was treated as being severely disabled.

(4) Sub-paragraph (3) applies only for the first 12 weeks following the date on which the person first joins the claimant's household.

(5) A person who is not a close relative of the claimant or his partner and—

- (a) who is liable to make payments on a commercial basis to the claimant or his partner in respect of his occupation of the dwelling;
- (b) to whom the claimant or his partner is liable to make payments on a commercial basis in respect of his occupation of that person's dwelling; or
- (c) who is a member of the household of a person to whom head (a) or (b) applies.

(6) Subject to paragraph 3(3), a person who jointly occupies the claimant's dwelling and who is either—

- (a) co-owner of that dwelling with the claimant or the claimant's ►<sup>7</sup>partner◀ (whether or not there are other co-owners); or

<sup>7</sup>Words in para. 2(6)(a) substituted by para. 8(a) of S.I. 2002/3197 as from 6.10.03.

(a) See s. 142(1) of the 1992 Act.

## Sch. 1

- (b) jointly liable with the claimant or the claimant's partner to make payments to a landlord in respect of his occupation of that dwelling.

(7) Subject to paragraph 3(3), a person who is a partner of a person to whom sub-paragraph (6) applies.

3.—(1) For the purposes of paragraphs 1 and 2, 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.

(2) In sub-paragraph (1), "communal area" means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation.

(3) Paragraph 2(6) and (7) applies to a person who is a close relative of the claimant or his partner only if the claimant or his partner's co-ownership, or joint liability to make payments to a landlord in respect of his occupation, of the dwelling arose either before 11th April 1988, or, if later, on or before the date upon which the claimant or the claimant's partner first occupied the dwelling in question.

## PART II

*Amount applicable for carers*

4.—(1) For the purposes of regulation 6(6)(a), this paragraph is satisfied if any of the requirements specified in sub-paragraphs (2) to (4) are met.

(2) A claimant is, or in the case of partners either partner is, or both partners are, entitled to an allowance under section 70 of the 1992 Act ►<sup>1</sup>carer's allowance◄.

(3) Where an additional amount has been awarded under regulation 6(6)(a) but

- (a) the person in respect of whose care the allowance has been awarded dies; or  
(b) the person in respect of whom the additional amount was awarded ceases to be entitled or ceases to be treated as entitled to the allowance,

this paragraph shall be treated as satisfied for a period of 8 weeks from the relevant date specified in sub-paragraph (4).

(4) The relevant date for the purposes of ►<sup>2</sup>sub-paragraph (3) is◄—

- (a) the Sunday following the death of the person in respect of whose care the allowance has been awarded (or beginning with the date of death if the death occurred on a Sunday);  
(b) where sub-paragraph (a) does not apply, the date on which the person who has been entitled to the allowance ceases to be entitled to that allowance.

5. For the purposes of paragraph 4, a person shall be treated as being entitled to and in receipt of an allowance under section 70 of the 1992 Act for any period not covered by an award but in respect of which a payment is made in lieu of an award.

## PART III

*Amount applicable for former claimants of  
income support►<sup>3</sup>, income-based jobseeker's allowance or income-related  
employment and support allowance◄*

6.—(1) If on the relevant day the relevant amount exceeds the provisional amount, an additional amount ("the transitional amount") equal to the difference shall be applicable to a claimant to whom sub-paragraph (2) applies.

<sup>1</sup>Words in para. 4(2) substituted by reg. 2(8) of S.I. 2003/2274 as from 6.10.03.

<sup>2</sup>Words in para. 4(4) substituted by para. 8(b) of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>3</sup>Words in heading substituted by reg. 4(7)(a) of S.I. 2008/1554 as from 27.10.08.

(2) This sub-paragraph applies to a claimant who, in respect of the day before the relevant day, was entitled to either income support<sup>1</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance<sup>2</sup>.

<sup>1</sup>Words substituted in para. 6(2) by reg. 4 (7)(b) of S.I. 2008/1554 as from 27.10.08.

(3) The relevant day is the day in respect of which the claimant is first entitled to state pension credit.

(4) The provisional amount means the amount of the appropriate minimum guarantee applicable to the claimant on the relevant day but for this paragraph.

(5) The relevant amount means the amount which, on the day before the relevant day, was the claimant's applicable amount—

- (a) for the purposes of determining his entitlement to income support; <sup>2</sup>◀
- (b) for the purpose of determining his entitlement to an income-based jobseeker's allowance <sup>2</sup>or
- (c) for the purposes of determining his entitlement to income-related employment and support allowance, ◀

<sup>2</sup>Word "or" omitted after sub-para. (5)(a), word "or" and sub-para (c) inserted and words inserted in sub-para. (v) by regs. 4(7)(c)(i)-(iii) of S.I. 2008/1554 as from 27.10.08.

less any of the following amounts included in it—

- (i) any amount determined in accordance with paragraph 2 of Schedule 2 to the Income Support Regulations or paragraph 2 of Schedule 1 to the Jobseeker's Allowance Regulations;
- (ii) any amount by way of a residential allowance applicable in accordance with paragraph 2A of Schedule 2 to the Income Support Regulations or paragraph 3 of Schedule 1 to the Jobseeker's Allowance Regulations;
- (iii) any amount by way of family premium applicable in accordance with paragraph 3 of Schedule 2 to the Income Support Regulations or paragraph 4 of Schedule 1 to the Jobseeker's Allowance Regulations;
- (iv) any amount by way of disabled child premium applicable in accordance with paragraph 14 of Schedule 2 to the Income Support Regulations or paragraph 16 of Schedule 1 to the Jobseeker's Allowance Regulations; and
- (v) any amount in respect of a person other than the claimant or his partner by way of enhanced disability premium applicable in accordance with paragraph 13A of Schedule 2 to the Income Support Regulations<sup>2</sup>, paragraph 7 of Schedule 4 to the Employment and Support Allowance Regulations<sup>2</sup> or paragraph 15A of Schedule 1 to the Jobseeker's Allowance Regulations<sup>2</sup>(a).

(6) In determining the relevant amount under sub-paragraph (5), the applicable amount shall be increased by an amount equal to the amount (if any) payable to the claimant in accordance with Part II of the Income Support (Transitional) Regulations 1987<sup>2</sup>(b) (transitional protection) or regulation 87(1) of the Jobseeker's Allowance Regulations (transitional supplement to income-based jobseeker's allowance).

(7) If—

- (a) paragraph 1 of Schedule 7 to the Income Support Regulations or paragraph 1 of Schedule 5 to the Jobseeker's Allowance <sup>3</sup>Regulations<sup>2</sup> applied to the claimant or his partner on the day before the relevant day; but
- (b) paragraph 2(2) of Schedule 3 does not apply to the claimant or his partner on the relevant day;

<sup>3</sup>Word inserted in para. 6(7)(a) by para. 8(c)(1) of the Sch. to S.I. 2002/3197 as from 6.10.03.

then for the purposes of this paragraph the relevant amount shall be determined on the assumption that the provision referred to in sub-paragraph (7)(a) did not apply in his case.

(8) Subject to sub-paragraph (9), the transitional amount shall—

(a) The relevant amending Instrument is S.I.2000/2629.

(b) S.I.1987/1969; the relevant amending Instruments are S.I.1988/521 and 670, 1989/1626 and 1991/1600.

## Schs. 1-2

- (a) be reduced by a sum equal to the amount (if any) by which the appropriate minimum guarantee increases after the relevant day;
- (b) cease to be included in the claimant's appropriate minimum guarantee from the day on which—
  - (i) the sum mentioned in head (a) above equals or exceeds the transitional amount; or
  - (ii) the claimant or the claimant's partner ceases to be entitled to state pension credit.

(9) For the purposes of sub-paragraph (8), there shall be disregarded—

- (a) any break in entitlement not exceeding 8 weeks; and

▶<sup>1</sup>(b) any amount by which the appropriate minimum guarantee of a patient is increased on 10th April 2006 by virtue of the substitution of paragraph 2(a) of Schedule 3. ◀

▶<sup>2</sup>(10) This sub-paragraph applies where the relevant amount included an amount in respect of housing costs relating to a loan—

- (a) which is treated as a qualifying loan by virtue of regulation 3 of the Income Support (General) Amendment and Transitional Regulations 1995(b) or paragraph 18(2) of Schedule 2 to the Jobseeker's Allowance Regulations ▶<sup>3</sup>or paragraph 20(2) of Schedule 6 to the Employment and Support Allowance Regulations◀; or
- (b) the appropriate amount of which was determined in accordance with paragraph 7(6C) of Schedule 3 to the Income Support Regulations as in force prior to 10th April 1995 and maintained in force by regulation 28(1) of the Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1995(c).

(11) Where sub-paragraph (10) applies, the transitional amount shall be calculated or, as the case may be, recalculated, on the relevant anniversary date determined in accordance with paragraph 7(4C) of Schedule II ("the relevant anniversary date") on the basis that the provisional amount on the relevant day included, in respect of housing costs, the amount calculated in accordance with paragraph 7(1) of Schedule II as applying from the relevant anniversary date and not the amount in respect of housing costs determined on the basis of the amount of the loan calculated in accordance with paragraph 7(4A) of that Schedule.

(12) The transitional amount as calculated in accordance with sub-paragraph (11) shall only be applicable from the relevant anniversary date. ◀

## SCHEDULE II

Regulation 6(6)(c)

## HOUSING COSTS

**Housing costs**

1.—(1) Subject to the following provisions of this Schedule, the housing costs applicable to a claimant in accordance with regulation 6(6)(c) are those costs—

- (a) which the claimant or, if he has a partner, his partner is, in accordance with paragraph 3, liable to meet in respect of the dwelling occupied as the home which he or his partner is treated as occupying; and
- (b) which qualify under paragraphs 11 to 13.

(2) In this Schedule—

- (a) "disabled person" means a person—
  - (i) aged 75 or over;
  - (ii) who, had he in fact been entitled to income support, would have satisfied the requirements of paragraph 12 of Schedule 2 to the Income Support Regulations (additional condition for the Higher Pensioner and Disability Premiums); or

(a) Paragraph 2 was substituted by S.I. 2005/3360.

(b) S.I. 1995/516.

(c) S.I. 1995/516.

<sup>1</sup>Sub-para. (9)(b) substituted by reg. 4(3) of S.I. 2006/588. For date of when to apply see S.I. 2006/588 reg. 1(8).

<sup>2</sup>Sub-paras. (10)-(12) added to para. 6 by para. 8(c)(ii) of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>3</sup>Words inserted in sub-para. 10(a) by reg. 4(7)(d) of S.I. 2008/1554 as from 27.10.08.

- (iii) who—
- (aa) has not attained the age of <sup>1</sup>20 and for whom the claimant or his partner is responsible; <sup>2</sup>and
- (bb) is a person in respect of whom disability living allowance is payable or would be payable but for <sup>3</sup>suspension or abatement because the person becomes a patient <sup>4</sup>or
- <sup>5</sup>(cc) is certified as severely sight impaired or blind by a consultant ophthalmologist or who is within 28 weeks of ceasing to be so certified; <sup>6</sup>or
- (dd) is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components) <sup>7</sup>or would be entitled to be an employment and support allowance including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component), but for the application of section 1A of that Act (duration of contributory allowance); <sup>8</sup>or
- (ee) is a person in respect of whom personal independence payment is payable or would be payable but for regulations under section 86(1) (hospital in-patients) of the 2012 Act <sup>9</sup>or is a person in respect of whom armed forces independence payment is payable; <sup>10</sup> or
- (ff) is entitled to an award of universal credit the calculation of which includes an amount under regulation 27(1) of the Universal Credit Regulations 2013 in respect of the fact that he has limited capability for work or limited capability for work and work-related activity, or would include such an amount but for regulation 27(4) or 29(4) of those regulations
- (b) “housing costs” means those costs to which sub-paragraph (1) refers;
- (c) “standard rate” means the rate for the time being <sup>11</sup>determined in accordance with in paragraph 9.
- (3) For the purposes of sub-paragraph (2)(a), a person shall not cease to be a disabled person on account of his being disqualified for receiving benefit or treated as capable of work by virtue of the operation of section 171E of the 1992 Act (a) (incapacity for work, disqualification etc. <sup>6</sup>or disqualified for receiving employment and support allowance or treated as not having limited capability for work in accordance with regulations made under section 18 of the Welfare Reform Act (disqualification).
- (4) In this Schedule, “non-dependant” means any person, except someone to whom sub-paragraph (5), (6) or (7) applies, who normally resides with the claimant.
- (5) This sub-paragraph applies to—
- (a) a partner of the claimant or any person under the age of <sup>12</sup>20 for whom the claimant or the claimant’s partner is responsible;
- (b) a person who lives with the claimant in order to care for him or for the claimant’s partner and who is engaged for that purpose by a charitable or voluntary organisation which makes a charge to the claimant or the claimant’s partner for the care provided by that person;
- (c) the partner of a person to whom head (b) above applies.
- (6) This sub-paragraph applies to a person, other than a close relative of the claimant or the claimant’s partner,—
- (a) who is liable to make payments on a commercial basis to the claimant or the claimant’s partner in respect of his occupation of the claimant’s dwelling; <sup>13</sup>or
- (b) <sup>13</sup>
- (c) who is a member of the household of a person to whom head (a) <sup>13</sup>above applies.

<sup>1</sup>Word substituted in para. 1(2)(a)(iii)(aa) by reg. 6(4) of S.I. 2006/718 as from 10.4.06.

<sup>2</sup>Word inserted in para. (iii) of defn. of “disabled person” by para. 9(a) of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>3</sup>Words substituted in para. (iii)(bb) of defn. of “disabled person” by reg. 8(4)(a) of S.I. 2005/3360 as from 10.4.06.

<sup>4</sup>Words inserted in para. (iii) of defn. of “disabled person” by para. 9(a) of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>5</sup>Para. 1(2)(a)(iii)(cc) substituted by reg. 3(4)(b)(i) of S.I. 2014/2888 as from 26.11.14.

<sup>6</sup>Word “or” and para. (dd) inserted in sub-para. (2)(a)(iii) and words added to sub-para. (3) by reg. 4(8)(a) of S.I. 2008/1554 as from 27.10.08.

<sup>7</sup>Words inserted in para. 1(2)(a)(iii)(dd) of Sch. 2 by reg. 6 of S.I. 2012/913 as from 1.5.12.

<sup>8</sup>Para. 1(2)(a)(iii)(ee) inserted by para. 27(5)(a) of Sch. to S.I. 2013/388 as from 8.4.13.

<sup>9</sup>Words inserted in para. 1(2)(a)(iii)(ee) of Sch. 2 by para. 23(5)(a) of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>10</sup>Para. 1(2)(a)(iii)(ff) inserted by reg. 33(6) of S.I. 2013/630 as from 29.4.13.

<sup>11</sup>Words in defn. of “standard rate” substituted by reg. 2(2) of S.I. 2004/2825 as from 28.11.04.

<sup>12</sup>Word substituted in para. 1(5)(a) by reg. 6(4) of S.I. 2006/718 as from 10.4.06.

<sup>13</sup>Words inserted in para. 1(6)(a), para. (b) & words in (6)(c) omitted by para. 9(b) of the Sch. to S.I. 2002/3197 as from 6.10.03.

(a) S. 171E was inserted by s. 6 of the Social Security (Incapacity for Work) Act 1994 (c. 18).

## Sch. 2

(7) This sub-paragraph applies to—

- (a) a person who jointly occupies the claimant's dwelling and who is either—
  - (i) co-owner of that dwelling with the claimant or the claimant's partners (whether or not there are other co-owners); or
  - (ii) jointly liable with the claimant or the claimant's partner to make payments to a landlord in respect of his occupation of that dwelling;
- (b) a partner of a person to whom head (a) above applies.

(8) For the purpose of sub-paragraphs (4) to (7) 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.

(9) In sub-paragraph (8), “communal area” means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation.

### Remunerative work

2.—(1) Subject to the following provisions of this paragraph, a person shall be treated for the purposes of this Schedule 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 sub-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 no work, those periods but disregarding any other absences);
- (b) in any other case, the period of 5 weeks immediately prior to the date of claim, or such other length of time as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(3) Where, for the purposes of sub-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 will 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 sub-paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(6) A person on income support or an income-based jobseeker's allowance for more than 3 days in any benefit week 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 the person is on maternity leave <sup>1</sup>, paternity leave <sup>2</sup>, shared parental leave <sup>3</sup> or adoption leave, <sup>4</sup> or is absent from work because he is ill.

(8) A person shall not be treated as engaged in remunerative work on any day on which he is engaged in an activity in respect of which—

- (a) a sports award has been made, or is to be made, to him; and

<sup>1</sup>Words inserted in para 2(7) by reg. 2(a) of S.I. 2003/2274 as from 6.10.03.

<sup>2</sup>Words inserted in Sch. 2, para. 2(7) by reg. 10(5) of S.I. 2014/3255 as from 31.12.14.

(a) 1993 c. 39.

- (b) no other payment is made or is expected to be made to him ►<sup>1</sup>,

and for the purposes of this sub-paragraph, “sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993(a) out of sums allocated to it for distribution under that section.◀

<sup>1</sup>Words inserted in para. 2(8) by para. 9(c) of the Sch. to S.I. 2002/3197 as from 6.10.03.

- (9) In this paragraph “benefit week”–

- (a) in relation to income support, has the same meaning as in regulation 2(1) of the Income Support Regulations;
- (b) in relation to jobseeker’s allowance, has the same meaning as in regulation 1(3) of the Jobseeker’s Allowance Regulations.

### **Circumstances in which a person is liable to meet housing costs**

3. A person is liable to meet housing costs where–

- (a) the liability falls upon him or his partner but not where the liability is to a member of the same household as the person on whom the liability falls;
- (b) because the person liable to meet the housing costs is not meeting them, the claimant has to meet those costs in order to continue to live in the dwelling occupied as the home and it is reasonable in all the circumstances to treat the claimant as liable to meet those costs;
- (c) he in practice shares the housing costs with other members of the household none of whom are close relatives either of the claimant or his partner, and
- (i) one or more of those members is liable to meet those costs, and
- (ii) it is reasonable in the circumstances to treat him as sharing responsibility.





**Circumstances in which a person is to be treated as occupying a dwelling as his home**

4.—(1) Subject to the following provisions of this paragraph, a person shall be treated as occupying as his home the dwelling normally occupied as his home by himself or, if he has a partner, by himself and his partner, and he shall not be treated as occupying any other dwelling as his home.

(2) In determining whether a dwelling is the dwelling normally occupied as the claimant's home for the purposes of sub-paragraph (1) regard shall be had to any other dwelling occupied by the claimant or by him and his partner whether or not that other dwelling is in Great Britain.

(3) Subject to sub-paragraph (4), where a claimant who has no partner is a full-time student or is on a training course and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which he occupies for the purpose of attending his course of study or his training course or, as the case may be, the dwelling which he occupies when not attending his course, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.

(4) A full-time student shall not be treated as occupying a dwelling as his home for any week of absence from it, other than an absence occasioned by the need to enter hospital for treatment, outside the period of study, if the main purpose of his occupation during the period of study would be to facilitate attendance on his course.

(5) Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as his home and he is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling normally occupied or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make those payments.

(6) Where a person is liable to make payments in respect of two (but not more than two) dwellings, he shall be treated as occupying both dwellings as his home only—

- (a) where he has left and remains absent from the former dwelling occupied as the home through fear of violence in that dwelling or of violence by a close relative or former partner and it is reasonable that housing costs should be met in respect of both his former dwelling and his present dwelling occupied as the home; or
- (b) in the case of partners, where one partner is a full-time student or is on a training course and it is unavoidable that he or they should occupy two separate dwellings and reasonable that housing costs should be met in respect of both dwellings; or
- (c) in the case where a person has moved into a new dwelling occupied as the home, except where sub-paragraph (5) applies, for a period not exceeding four benefit weeks ►<sup>1</sup>from the first day of the benefit week where the move takes place on that day, but if it does not, from the first day of the next following benefit week [from the first day of the benefit week in which the move occurs]◄<sup>1</sup> if his liability to make payments in respect of two dwellings is unavoidable.

<sup>1</sup>Words inserted in para. 4(6)(c) by reg. 4(1) of S.I. 2006/3274 as from 8.1.07. Words in brackets to be used when para. 4(2) of Sch. 2 applies.

(7) Where—

- (a) a person has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
- (b) he had claimed state pension credit before moving in and either that claim has not yet been determined or it has been determined but—
  - (i) an amount has not been included under this Schedule; or

## Sch. 2

- (ii) the claim has been refused and a further claim has been made within four weeks of the date on which the claimant moved into the new dwelling occupied as the home; and
- (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and—
  - (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the claimant, his partner or a person under the age of <sup>1</sup>20<sup>◀</sup> for whom either the claimant or his partner is responsible; or
  - (ii) the move was delayed pending <sup>2</sup>local welfare provision or<sup>◀</sup> the outcome of an application under Part VIII of the 1992 Act for a social fund payment to meet a need arising out of the move or in connection with setting up the home in the dwelling; or
  - (iii) the person became liable to make payments in respect of the dwelling while he was a patient or was in a care home <sup>3</sup>or an independent hospital<sup>◀</sup>,

<sup>1</sup>Word in para. 4(7)(c)(i) substituted by reg. 6(4) of S.I. 2006/718 as from 10.4.06.

<sup>2</sup>Words in para. 4(7)(c)(ii) inserted by reg. 6(3)(a) of S.I. 2013/443 as from 2.4.13.

<sup>3</sup>In para. 4, words in sub-paras. (7)(c)(iii), (9) substituted & sub-para (8) substituted by para. 5(a) of Sch. 5 to S.I. 2005/2687 as from 24.10.05.

he shall be treated as occupying the dwelling as his home for any period not exceeding four weeks immediately prior to the date on which he moved into the dwelling and in respect of which he was liable to make payments.

<sup>3</sup>(8) This sub-paragraph applies to a person who enters a care home or an independent hospital—

- (a) for the purpose of ascertaining whether that care home or independent hospital suits his needs, and
- (b) with the intention of returning to the dwelling which he normally occupies as his home should, in the event that, the care home or independent hospital prove not to suit his needs,

and while in the care home or independent hospital, the part of the dwelling which he normally occupies as his home is not let, or as the case may be, sub-let to another person.<sup>◀</sup>

(9) A person to whom sub-paragraph (8) applies shall be treated as occupying the dwelling he normally occupies as his home during any period (commencing with the day he enters the <sup>3</sup>care home or independent hospital,<sup>◀</sup>) not exceeding 13 weeks in which the person is resident in the <sup>3</sup>care home or independent hospital,<sup>◀</sup> but only in so far as the total absence from the dwelling does not exceed 52 weeks.

(10) A person, other than a person to whom sub-paragraph (11) applies, shall be treated as occupying a dwelling as his home throughout any period of absence not exceeding 13 weeks, if, and only if—

- (a) he intends to return to occupy the dwelling as his home; and
- (b) the part of the dwelling normally occupied by him has not been let or, as the case may be, sub-let to another person; and
- (c) the period of absence is unlikely to exceed 13 weeks.

(11) This sub-paragraph applies to a person whose absence from the dwelling he normally occupies as his home is temporary and—

- (a) he intends to return to occupy the dwelling as his home; and
- (b) while the part of the dwelling which is normally occupied by him has not been let or, as the case may be, sub-let; and
- (c) he is—
  - <sup>4</sup>(i) detained in custody on remand pending trial or, as a condition of bail, required to reside—
    - (aa) in a dwelling, other than the dwelling he occupies as his home; or
    - (bb) in premises approved under <sup>5</sup>section 13 of the Offender Management Act 2007<sup>◀</sup> ,
  - or, detained pending sentence upon conviction; or<sup>◀</sup>

<sup>4</sup>Para. 4(11)(c)(i) substituted by reg. 7(5)(a) of S.I. 2004/2327 as from 4.4.05.

<sup>5</sup>Words substituted in para. 4(11)(c)(i)(bb) by reg. 5(4)(a) of S.I. 2008/2767 as from 17.11.08

- (ii) resident in a hospital or similar institution as a patient; or
  - (iii) undergoing or, as the case may be, his partner or a person who has not attained the age of ►<sup>1</sup>20◄ and who is dependent on him or his partner is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than in a care home ►<sup>2</sup>or an independent hospital◄ ; or
  - (iv) following, in the United Kingdom or elsewhere, a training course; or
  - (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere; or
  - (vi) undertaking the care of a person under the age of ►<sup>1</sup>20◄ whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment, or
  - (vii) a person who is, whether in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than a care home ►<sup>2</sup>or an independent hospital◄ ; or
  - (viii) a full-time student to whom sub-paragraph (3) or (6)(b) does not apply; or
  - (ix) a person, other than a person to whom sub-paragraph (8) applies, who is receiving care provided in a care home ►<sup>2</sup>or an independent hospital◄ ; or
  - (x) a person to whom sub-paragraph (6)(a) does not apply and who has left the dwelling he occupies as his home through fear of violence in that dwelling, or by a person who was formerly his partner or is a close relative; and
- (d) the period of his absence is unlikely to exceed a period of 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

<sup>1</sup>Word in para. 4(11)(c)(iii) & (vi) substituted by reg. 6(4) of S.I. 2006/718 as from 10.4.06.

<sup>2</sup>In para. 4, words in sub-para. (11)(c)(iii) substituted & words in sub-paras. (vii), (ix) & 5(1)(b) inserted by para. 5(a) & (b) of Sch. 5 to S.I. 2005/2687 as from 24.10.05.

(12) A person to whom sub-paragraph (11) applies is to be treated as occupying the dwelling he normally occupies as his home during any period of absence not exceeding 52 weeks beginning with the first day of that absence.

(13) In this paragraph—

- (a) “medically approved” means certified by a medical practitioner;
- (b) “training course” means such a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, ►<sup>3</sup>Skills Development Scotland,◄ Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

<sup>3</sup>Words inserted in para. 4(13)(b) by reg. 5(4)(a) of S.I. 2009/583 as from 6.4.09.

### Housing costs not met

5.—(1) No amount may be met under the provisions of this Schedule—

- (a) in respect of housing benefit expenditure; or
- (b) where the claimant is in accommodation which is a care home ►<sup>2</sup>or an independent hospital◄ except where he is in such accommodation during a temporary absence from the dwelling he occupies as his home and in so far as they relate to temporary absences, the provisions of paragraph 4(8) to (12) apply to him during that absence.

►<sup>4</sup>(1A) In paragraph (1), “housing benefit expenditure” means expenditure in respect of which housing benefit is payable as specified in regulation 10(1) of the Housing Benefit (General) Regulations 1987(a) but does not include any such expenditure in respect of which an additional amount is applicable under regulation 6(6)(c) (housing costs).◄

<sup>4</sup>Sub-para. (1A) inserted in para. 5 by reg. 23(1) (i) of S.I. 2002/3019 as from 6.10.03

(2) Subject to the following provisions of this paragraph, loans which, apart from this paragraph, qualify under paragraph 11 shall not so qualify where the loan was incurred during the relevant period and was incurred—

- (a) after 1st October 1995, or
- (b) after 2nd May 1994 and the housing costs applicable to that loan were not met by virtue of the former paragraph 5A of Schedule 3 to the Income Support

(a) S.I. 1989/1971; the relevant amending Instrument is S.I. 1988/1971.

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Regulations in any one or more of the 26 weeks preceding 2nd October 1995; or

- (c) subject to sub-paragraph (3), in the 26 weeks preceding 2nd October 1995 by a person—
  - (i) who was not at that time entitled to income support; and
  - (ii) who becomes, or whose partner becomes entitled to income support or an income-based jobseeker's allowance after 1st October 1995 and that entitlement is within 26 weeks of an earlier entitlement to income support or an income-based jobseeker's allowance of the claimant or his partner.

(3) Sub-paragraph (2)(c) shall not apply in respect of a loan where the claimant has interest payments on that loan met without restrictions under an award of income support in respect of a period commencing before 2nd October 1995.

(4) The "relevant period" for the purposes of this paragraph is any period during which the person to whom the loan was made—

- (a) is entitled to income support, income-based jobseeker's allowance <sup>1</sup>, income-related employment and support allowance <sup>1</sup> or state pension credit; or
- (b) has a partner and the partner is entitled to income support, income-based jobseeker's allowance or <sup>1</sup>, income-related employment and support allowance <sup>1</sup> to state pension credit;

<sup>1</sup>Words inserted in sub-para. (4)(a) & (b) and words substituted in sub-para. (5) by reg. 4(8)(b) of S.I. 2008/1554 as from 27.10.08.

together with any linked period, that is to say a period falling between two periods separated by not more than 26 weeks in which one of heads (a) or (b) above is satisfied.

(5) For the purposes of sub-paragraph (4), a person shall be treated as entitled to income support or, as the case may be, income-based jobseeker's allowance <sup>1</sup>, state pension credit or income-related employment and support allowance <sup>1</sup>, during any period when he or his partner was not so entitled because—

- (a) that person or his partner was participating in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations <sup>2</sup>; and
- (b) in consequence of such participation that person or his partner was engaged in remunerative work or
  - (i) in the case of income support, had an income in excess of the claimant's applicable amount as prescribed in Part IV of the Income Support Regulations; or
  - (ii) in the case of state pension credit, the claimant's income exceeded the amount of his state pension credit entitlement.

<sup>2</sup>Words omitted in para. 5(5)(a) by reg. 5(2) of S.I. 2008/698 as from 14.4.08.

(6) For the purposes of sub-paragraph (4)—

- (a) any week in the period of 26 weeks ending on 1st October 1995 on which there arose an entitlement to income support such as is mentioned in that sub-paragraph shall be taken into account in determining when the relevant period commences; and
- (b) two or more periods of entitlement and any intervening linked periods shall together form a single relevant period.

(7) Where the loan to which sub-paragraph (2) refers has been applied—

- (a) for paying off an earlier loan, and that earlier loan qualified under paragraph 11 during the relevant period; or
- (b) to finance the purchase of a property where an earlier loan, which qualified under paragraph 11 or 12 during the relevant period in respect of another property, is paid off (in whole or in part) with monies received from the sale of that property;

then the amount of the loan to which sub-paragraph (2) applies is the amount (if any) by which the new loan exceeds the earlier loan.

(8) Notwithstanding the preceding provisions of this paragraph, housing costs shall be met in any case where a claimant satisfies any of the conditions specified in sub-paragraphs (9) to <sup>3</sup>(12) <sup>1</sup> below, but—

- (a) those costs shall be subject to any additional limitations imposed by the sub-paragraph; and

<sup>3</sup>Figure in para. 5(8) substituted by para. 9(d)(ii) of the Sch. to S.I. 2002/3197 as from 6.10.03.

(b) where the claimant satisfies the conditions in more than one of these sub-paragraphs, only one sub-paragraph shall apply in his case and the one that applies shall be the one most favourable to him.

(9) The conditions specified in this sub-paragraph are that—

- (a) during the relevant period the claimant or his partner acquires an interest (“the relevant interest”) in a dwelling which he then occupies or continues to occupy, as his home; and
- (b) in the week preceding the week in which the relevant interest was acquired, housing benefit was payable to the claimant or his partner;

so however that the amount to be met by way of housing costs shall initially not exceed the aggregate of—

- (i) the housing benefit payable in the week mentioned at sub-paragraph (9)(b); and
- (ii) any additional amount applicable to the claimant or his partner in accordance with regulation 6(6)(c) in that week,

and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of the acquisition, in the standard rate or in any housing costs which qualify under paragraph 13 (other housing costs).

(10) The condition specified in this sub-paragraph is that the loan was taken out, or an existing loan increased, to acquire alternative accommodation more suited to the special needs of a disabled person than the accommodation which was occupied before the acquisition by the claimant.

(11) The conditions specified in this sub-paragraph are that—

- (a) the loan commitment increased in consequence of the disposal of the dwelling occupied as the home and the acquisition of an alternative such dwelling; and
- (b) the change of dwelling was made solely by reason of the need to provide separate sleeping accommodation for persons of different sexes aged 10 or over but under <sup>1</sup>20<sup>◀</sup> who live with the claimant and are looked after by the claimant or his partner.

(12) The conditions specified in this sub-paragraph are that—

- (a) during the relevant period the claimant or his partner acquires an interest (“the relevant interest”) in a dwelling which he then occupies as his home; and
- (b) in the week preceding the week in which the relevant interest was acquired, an additional amount was applicable under regulation 6(6)(c) in respect of the claimant or his partner which included an amount determined by reference to paragraph 13 and did not include any amount specified in paragraph 11 or paragraph 12;

<sup>1</sup>Word substituted in para. 5(11)(b) by reg. 6(4) of S.I. 2006/718 as from 10.4.06.

so however that the amount to be met by way of housing costs shall initially not exceed the amount so determined, and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of acquisition, in the standard rate or in any housing costs which qualify under paragraph 13 (other housing costs).

(13) The following provisions of this Schedule shall have effect subject to the provisions of this paragraph.

#### **Apportionment of housing costs**

6.—(1) Where the dwelling occupied as the home is a composite hereditament and—

- (a) before 1st April 1990 for the purposes of section 48(5) of the General Rate Act 1967 (reduction of rates on dwellings), it appeared to a rating authority or it was determined in pursuance of subsection (6) of section 48 of that Act that the hereditament, including the dwelling occupied as the home, was a

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- mixed hereditament and that only a proportion of the rateable value of the hereditament was attributable to use for the purpose of a private dwelling; or
- (b) in Scotland, before 1st April 1989 an assessor acting pursuant to section 45(1) of the Water (Scotland) Act 1980 (provision as to valuation roll) has apportioned the net annual value of the premises including the dwelling occupied as the home between the part occupied as a dwelling and the remainder,

the additional amount applicable under this Schedule shall be such proportion of the amounts applicable in respect of the hereditament or premises as a whole as is equal to the proportion of the rateable value of the hereditament attributable to the part of the hereditament used for the purposes of a private tenancy or, in Scotland, the proportion of the net annual value of the premises apportioned to the part occupied as a dwelling house.

(2) Subject to sub-paragraph (1) and the following provisions of this paragraph, where the dwelling occupied as the home is a composite hereditament, the additional amount applicable under this Schedule shall be the relevant fraction of the amount which would otherwise be applicable under this Schedule in respect of the dwelling occupied as the home.

(3) For the purposes of sub-paragraph (2), the relevant fraction shall be obtained in accordance with the formula—

$$\frac{A^*}{A + B}$$

where—

“A” is the current market value of the claimant’s interest in that part of the composite hereditament which is domestic property within the meaning of section 66 of the Act of 1988;

“B” is the current market value of the claimant’s interest in that part of the composite hereditament which is not domestic property within that section.

*\*Formula in para. 6(3) maintained in force by art. 21(6) & Sch. 13 of S.I. 2015/457 on or after 6.4.15. See art. 1(2)(i) of the S.I. for when to apply.*

(4) In this paragraph—

“composite hereditament” means—

- (a) as respects England and Wales, any hereditament which is shown as a composite hereditament in a local non-domestic rating list;
- (b) as respects Scotland, any lands and heritages entered in the valuation roll which are part residential subjects within the meaning of section 26(1) of the Act of 1987;

“local non-domestic rating list” means a list compiled and maintained under section 41(1) of the Act of 1988;

“the Act of 1987” means the Abolition of Domestic Rates Etc. (Scotland) Act 1987(a);

“the Act of 1988” means the Local Government Finance Act 1988(b).

(5) Where responsibility for expenditure which relates to housing costs met under this Schedule is shared, the additional amounts applicable under this Schedule shall be calculated by reference to the appropriate proportion of that expenditure for which the claimant is responsible.

### The calculation for loans

7.—(1) The weekly amount of housing costs to be met under this Schedule in respect of a loan which qualifies under paragraph 11 or 12 shall be calculated by applying the formula—

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(a) 1987 c. 47.

(b) 1988 c. 41.

$$\frac{A \times B}{52}$$

where—

A = the amount of the loan which qualifies under paragraph 11 or 12;

B = the standard rate for the time being applicable in respect of that loan.◀

*\*Formula in para. 7(1) maintained in force by art. 21(6) & Sch. 13 of S.I. 2015/457 on or after 6.4.15. See art. 1(2)(i) of the S.I. for when to apply.*

▶<sup>2</sup>(2) For the purposes of sub-paragraph (1) and subject to sub-paragraphs (3) and (4A), the amount of the qualifying loan—

- (a) except where paragraph (b) applies, shall be determined on the date the housing costs are first met and thereafter on the anniversary of that date;
- (b) where housing costs are being met in respect of a qualifying loan (“the existing loan”) and housing costs are subsequently met in respect of one or more further qualifying loans (“the new loan”), shall be the total amount of those loans determined on the date the housing costs were first met in respect of the new loan and thereafter on the anniversary of the date housing costs were first met in respect of the existing loan.◀

(3) Where the claimant or his partner—

- (a) ceases to be in receipt of or treated as being in receipt of state pension credit; but
- (b) within 12 weeks thereof, one of them subsequently becomes entitled again to the credit; and
- (c) sub-paragraph (4) applies,

the amount of the qualifying loan shall be—

- (i) the amount last determined for the purposes of the earlier entitlement; and
- (ii) ▶<sup>2</sup>recalculated on the relevant date specified in sub-paragraph (4C).◀

(4) This sub-paragraph applies if—

- (a) the earlier entitlement included an amount in respect of a qualifying loan; and
- (b) the circumstances affecting the calculation of the qualifying loan remain unchanged since the last calculation of that loan.

▶<sup>2</sup>(4A) Where—

- (a) the last day on which either the claimant or his partner were entitled to income support ▶<sup>3</sup>, income-related employment and support allowance◀ or to an income-based jobseeker’s allowance was no more than twelve weeks before—
  - (i) except where head (ii) applies, the first day of entitlement to state pension credit; or
  - (ii) where the claim for state pension credit was treated as made on a day earlier than the day on which it was actually made (“the actual date”), the day which would have been the first day of entitlement to state pension credit had the claim been treated as made on the actual date; and
- (b) sub-paragraph (4B) applies,

the amount of the qualifying loan shall be the amount last determined for the purposes of the earlier entitlement and recalculated on the relevant date specified in paragraph (4C).

(4B) This sub-paragraph applies—

- (a) where the earlier entitlement was to income support, if their applicable amount included an amount determined in accordance with Schedule 3 to

<sup>1</sup>Words in para. 7(1) of Sch. 2 substituted by reg. 2(2)(c) of S.I. 2004/2825 as from 28.11.04.

<sup>2</sup>In para. 7, sub-para. (2) & (3)(ii) substituted & sub-para. (4A)-(4C) inserted by para. 9(e) of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>3</sup>Words inserted in sub-para. (4A)(a) by reg. 4(8)(c)(i) of S.I. 2008/1554 as from 27.10.08.

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<sup>1</sup>Word “or” omitted after sub-para. (4B)(a), word “or” substituted for word “and” and para. (c) inserted by reg. 4(8)(d)(ii) of S.I. 2008/1554 as from 27.10.08.

- the Income Support Regulations as applicable to them in respect of a loan which qualifies under paragraph 15 or 16 of that Schedule; ►<sup>1</sup>◄
- (b) where the earlier entitlement was to an income-based jobseeker’s allowance, if their applicable amount included an amount determined in accordance with Schedule 2 to the Jobseeker’s Allowance Regulations as applicable to them in respect of a loan which qualifies under paragraph 14 or 15 of that Schedule; ►<sup>1</sup>◄
  - (c) where the earlier entitlement was to an income-related employment and support allowance, if their applicable amount included an amount determined in accordance with Schedule 6 to the Employment and Support Allowance Regulations as applicable to them in respect of a loan which qualifies under paragraph 16 to 18 of that Schedule, and ◄

where the circumstances affecting the calculation of the qualifying loan remain unchanged since the last calculation of that loan and in this paragraph, “qualifying loan” shall, where the context requires, be construed accordingly.

- (4C) The recalculation shall take place–
  - (a) in a case where sub-paragraph (3) applies, on each subsequent anniversary of the date on which, for the purposes of sub-paragraph (2), housing costs were first met;
  - (b) in a case where sub-paragraph (4A) applies–
    - (i) where housing costs under the earlier entitlement were being met in respect of more than one qualifying loan and the amounts of those loans were recalculated on different dates, on the first of those dates which falls during the award of state pension credit and on each subsequent anniversary of that date;
    - (ii) in any other case, on each subsequent anniversary of the date on which housing costs were first met under the earlier entitlement;
  - (c) in the case of claims for state pension credit made between 6th October 2003 and 5th October 2004 and to which sub-paragraph (4A) does not apply–
    - (i) where there are no housing costs to be met as at the date of claim but housing costs are to be met in respect of a qualifying loan taken out after the date of claim, on each subsequent anniversary of the date on which housing costs in respect of that loan were first met;
    - (ii) in any other case, on each subsequent anniversary of the date on which the decision was made to award state pension credit. ◄

<sup>2</sup>Sub-para. (5) substituted by reg. 23(1)(ii) of S.I. 2002/3019 as from 6.10.03.

►<sup>2</sup>(5) Where in the period since the amount applicable under this Schedule was last determined, there has been a change of circumstances, other than a reduction in the amount of the outstanding loan, which increases or reduces the amount applicable, it shall be recalculated so as to take account of that change. ◄

### General provisions applying to housing costs

8.—(1) Where for the time being a loan exceeds, or in a case where more than one loan is to be taken into account, the aggregate of those loans exceeds the appropriate amount specified in sub-paragraph (2), then the amount of the loan or, as the case may be, the aggregate amount of those loans, shall for the purposes of this Schedule, be the appropriate amount.

(2) Subject to the following provisions of this paragraph, the appropriate amount is £100,000.\*

(3) Where a person is treated under paragraph 4(6) (payments in respect of two dwellings) as occupying two dwellings as his home, then the restrictions imposed by sub-paragraph (1) shall be applied separately to the loans for each dwelling.

(4) In a case to which paragraph 6 (apportionment of housing costs) applies, the appropriate amount for the purposes of sub-paragraph (1) shall be the lower of–

- <sup>3</sup>(a) the sum shall be determined by applying the formula–  
\*P × Q, ◄

where–

P = the relevant fraction for the purposes of paragraph 6, and

<sup>3</sup>Words substituted in Sch. 2, para. 8(4)(a) by art. 27(6) & Sch. 17 of S.I. 2012/780 on or after 9.4.12. See art. 1(2)(m) of the S.I. for when to apply.

\*Amount of £100,000 in para. 8(2) of Sch. 2 remains unchanged by art. 21(6) & Sch. 13 of S.I. 2015/457 on or after 6.4.15. See art. 1(2)(i) of the S.I. for when to apply.



Q = the amount or, as the case may be, the aggregate amount for the time being of any loan or loans which qualify under this Schedule; or

(b) the sum for the time being specified in sub-paragraph (2).

*\*Formula in para. 8(4)(a) maintained in force by art. 21(6) & Sch. 13 of S.I. 2015/457 on or after 6.4.15. See art. 1(2)(i) of the S.I. for when to apply.*

(5) In a case to which paragraph 11(3) or 12(3) (loans which qualify in part only) applies, the appropriate amount for the purposes of sub-paragraph (1) shall be the lower of—

(a) a sum representing for the time being the part of the loan applied for the purposes specified in paragraph 11(1) or (as the case may be) paragraph 12(1); or

(b) the sum for the time being specified in sub-paragraph (2).

(6) In the case of any loan to which paragraph 12(2)(k) (loan taken out and used for the purpose of adapting a dwelling for the special needs of a disabled person) applies the whole of the loan, to the extent that it remains unpaid, shall be disregarded in determining whether the amount for the time being specified in sub-paragraph (2) is exceeded.

(7) Where in any case the amount for the time being specified for the purposes of sub-paragraph (2) is exceeded and there are two or more loans to be taken into account under either or both paragraphs 11 and 12, then the amount of eligible interest in respect of each of those loans to the extent that the loans remain outstanding shall be determined as if each loan had been reduced to a sum equal to the qualifying portion of that loan.

(8) For the purposes of sub-paragraph (7), the qualifying portion of a loan shall be determined by applying the following formula—

$$\blacktriangleright^1 R \times \frac{S}{T} \blacktriangleleft$$

<sup>1</sup>Formula substituted in para. 8 by reg. 10(5) of S.I. 2007/2618 as from 10.9.07.

where—

R = the amount for the time being specified for the purposes of sub-paragraph (1);

S = the amount of the outstanding loan to be taken into account;

T = the aggregate of all outstanding loans to be taken into account under paragraphs 11 and 12.

*\*Formula in para. 8 is maintained in force by art. 21(6) & Sch. 13 of S.I. 2015/457 on or after 6.4.15. See art. 1(2)(i) of the S.I. for when to apply.*

### The standard rate

9.—<sup>2</sup>(1) The standard rate is the rate of interest applicable per annum to a loan which qualifies under this Schedule.

<sup>3</sup>(2) Subject to the following provisions of this paragraph, the standard rate is to be the average mortgage rate published by the Bank of England in August 2010. <sup>4</sup>It is to be varied each time that sub-paragraph (2B) applies such that the average mortgage rate published on the reference day then becomes the new standard rate in accordance with sub-paragraph (2D)\*. <sup>5</sup>

*\*Para. 9(2) is maintained in force by art. 21(6) & Sch. 13 of S.I. 2015/457 on or after 6.4.15. See art. 1(2)(i) of the S.I. for when to apply.*

(2A) The standard rate is to be varied each time that sub-paragraph (2B) applies.

(2B) This sub-paragraph applies when, on any reference day, the Bank of England publishes an average mortgage rate which differs by <sup>5</sup>0.5 percentage points <sup>6</sup>or more from the standard rate that applies on that reference day (whether by virtue of sub-paragraph (2) or of a previous application of this sub-paragraph).

<sup>2</sup>Para. 9 substituted by reg. 2(4)(c) of S.I. 2004/2825 as from 28.11.04.

<sup>3</sup>Sch. 2, para. 9(2) substituted with para. 9(2)-(2E) by reg. 2 of S.I. 2010/1811 as from on or after 1.10.10. See reg. 1 of the S.I. for when to apply in certain situations.

<sup>4</sup>Words added to Sch. 2, para. 9(2) by art. 27(6) & Sch. 17 of S.I. 2011/821 on or after 11.4.11. See art. 1(2)(m) of the S.I. for when to apply.

<sup>5</sup>Words in para. 9(2B) substituted by reg. 7(6) of S.I. 2014/591 as from 28.4.14.

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(2C) The average mortgage rate published on that reference day then becomes the new standard rate in accordance with sub-paragraph (2D).

(2D) Any variation in the standard rate by virtue of sub-paragraphs (2A) to (2C) comes into effect—

- (a) for the purposes of sub-paragraph (2B) (in consequence of its first and any subsequent application), on the day after the reference day referred to in sub-paragraph (2C);
- (b) for the purpose of calculating the weekly amount of housing costs to be met under this Schedule, on the day specified by the Secretary of State<sup>(a)</sup>.

(2E) In this paragraph—

“average mortgage rate” means the effective interest rate (non-seasonally adjusted) of United Kingdom resident banks and building societies for loans to households secured on dwellings published by the Bank of England in respect of the most recent period for that rate specified at the time of publication<sup>(b)</sup>;

“reference day” means any day falling after 1st October 2010.<sup>◀</sup>

(3) The Secretary of State shall determine the date from which the standard rate calculated in accordance with sub-paragraph (2) takes effect<sup>(c)</sup>.

<sup>1</sup>Sub-paras. (4) to (6) omitted by reg. 5(2)(b) of S.I. 2007/3183 as from 17.12.07.

(4)-(6) ▶<sup>1</sup>◀

### Excessive Housing Costs

**10.—(1)** Housing costs which, apart from this paragraph, fall to be met under this Schedule shall be met only to the extent specified in sub-paragraph (3) where—

- (a) the dwelling occupied as the home, excluding any part which is let, is larger than is required by the claimant, his partner (if he has one), any person under the age of ▶<sup>2</sup>20◀ and any other non-dependants having regard, in particular, to suitable alternative accommodation occupied by a household of the same size; or
- (b) the immediate area in which the dwelling occupied as the home is located is more expensive than other areas in which suitable alternative accommodation exists; or
- (c) the outgoings of the dwelling occupied as the home which are met under paragraphs 11 to 13 are higher than the outgoings of suitable alternative accommodation in the area.

(2) For the purposes of heads (a) to (c) of sub-paragraph (1), no regard shall be had to the capital value of the dwelling occupied as the home.

(3) Subject to the following provisions of this paragraph, the amount of the loan which falls to be met shall be restricted and the excess over the amounts which the claimant would need to obtain suitable alternative accommodation shall not be allowed.

(4) Where, having regard to the relevant factors, it is not reasonable to expect the claimant and his partner to seek alternative cheaper accommodation, no restriction shall be made under sub-paragraph (3).

(a) The new standard rate, and the day specified by the Secretary of State as the day on which it comes into effect for the purpose of calculating the weekly amount of housing costs, will be made available at: [http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/On\\_a\\_low\\_income/DG\\_180321](http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/On_a_low_income/DG_180321) at least seven days before the variation comes into effect.

(b) This is available on the Bank of England website: <http://www.bankofengland.co.uk/statistics/bankstats/current/index.htm>. The effective rate appears in Table G1.4 in the column headed “HSDE”.

(c) The date determined by the Secretary of State and the amount of the standard rate are available from the Department for Work and Pensions at the following address: DWP, Housing Support Division, 5th Floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT. The date determined and the standard rate are published on the DWP website ([www.dwp.gov.uk](http://www.dwp.gov.uk)) at least seven days before the new standard rate becomes applicable.

- (5) In sub-paragraph (4), “the relevant factors” are—
- (a) the availability of suitable accommodation and the level of housing costs in the area; and
  - (b) the circumstances of the claimant and those who live with him, including in particular the age and state of health of any of those persons, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any person below the age of ►<sup>1</sup>20◀ who lives with the claimant.

►<sup>2</sup>(6) Where sub-paragraph (4) does not apply and the claimant or the claimant's partner was able to meet the financial commitments for the dwelling occupied as the home when these were entered into, no restriction shall be made under this paragraph during the first 26 weeks immediately following the date on which—

- (a) the claimant became entitled to state pension credit where the claimant's housing costs fell within one of the cases in sub-paragraph (1) on that date; or
- (b) a decision took effect which was made under section 10 (decisions superseding earlier decisions) of the Social Security Act 1998 on the ground that the claimant's housing costs fell within one of the cases in sub-paragraph (1),

nor during the next 26 weeks if and so long as the claimant uses his best endeavours to obtain cheaper accommodation.◀

(7) For the purposes of calculating any period of 26 weeks referred to in sub-paragraph (6), and for those purposes only, a person shall be treated as entitled to state pension credit for any period of 12 weeks or less in respect of which he was not in receipt of state pension credit and which fell immediately between periods in respect of which he was in receipt thereof.

- (8) Any period in respect of which—
- (a) state pension credit was paid to a person, and
  - (b) it was subsequently determined that he was not entitled to state pension credit for that period,

shall be treated for the purposes of sub-paragraph (7) as a period in respect of which he was not in receipt of state pension credit.

(9) Any period which falls before the appointed day in respect of which a person was entitled to income support or income-based jobseeker's allowance shall be treated, for the purpose of calculating any period of 26 weeks or as the case may be 12 weeks mentioned in sub-paragraphs (6) and (7), as a period in respect of which he was entitled to state pension credit.

(10) References to state pension credit in sub-paragraphs (6) and (7) shall be treated as including references to income support ►<sup>3</sup>, income-based jobseeker's allowance and income-related employment and support allowance◀ in respect of any period which falls immediately before—

- (a) the appointed day; or
- (b) the day the claimant or his partner attains the qualifying age.

### Loans on residential property

**11.—**(1) A loan qualifies under this paragraph where the loan was taken out to defray monies applied for any of the following purposes—

- (a) acquiring an interest in the dwelling occupied as the home; or
- (b) paying off another loan to the extent that the other loan would have qualified under head (a) above had the loan not been paid off.

(2) For the purposes of this paragraph, references to a loan include also a reference to money borrowed under a hire purchase agreement for any purpose specified in heads (a) and (b) of sub-paragraph (1).

<sup>1</sup>Word in para. 10(5)(b) substituted by reg. 6(4) of S.I. 2006/718 as from 10.4.06.

<sup>2</sup>Para. 10(6) substituted by reg. 5(4)(b) of S.I. 2008/2767 as from 17.11.08.

<sup>3</sup>Words substituted in para. 10(10) by reg. 4(8)(d) of S.I. 2008/1554 as from 27.10.08.

## Sch. 2

(3) Where a loan is applied only in part for the purposes specified in heads (a) and (b) of sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

**Loans for repairs and improvements to the dwelling occupied as the home**

**12.—(1)** A loan qualifies under this paragraph where the loan was taken out, with or without security, for the purpose of—

- (a) carrying out repairs and improvements to the dwelling occupied as the home;
- (b) paying any service charge imposed to meet the cost of repairs and improvements to the dwelling occupied as the home;
- (c) paying off another loan to the extent that the other loan would have qualified under head (a) or (b) of this sub-paragraph had the loan not been paid off,

and the loan was used for that purpose, or is used for that purpose within 6 months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case.

(2) In sub-paragraph (1), “repairs and improvements” means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling—

- (a) provision of a fixed bath, shower, wash basin, sink or lavatory, and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
- (b) repairs to existing heating systems;
- (c) damp proof measures;
- (d) provision of ventilation and natural lighting;
- (e) provision of drainage facilities;
- (f) provision of facilities for preparing and cooking food;
- (g) provision of insulation of the dwelling occupied as the home;
- (h) provision of electric lighting and sockets;
- (i) provision of storage facilities for fuel or refuse;
- (j) repairs of unsafe structural defects;
- (k) adapting a dwelling for the special needs of a disabled person; or
- (l) provision of separate sleeping accommodation for persons of different sexes aged 10 or over but under age <sup>1</sup>20<sup>2</sup> who live with the claimant and for whom the claimant or partner is responsible.

<sup>1</sup>Word in para. 12(2)(1) substituted by reg. 6(4) of S.I. 2006/718 as from 10.4.06.

(3) Where a loan is applied only in part for the purposes specified in sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

**Other housing costs**

**13.—(1)** Subject to the deduction specified in sub-paragraph (2) and the reductions applicable in sub-paragraph (5), there shall be met under this paragraph the amounts, calculated on a weekly basis, in respect of the following housing costs—

- (a) payments by way of rent or ground rent relating to a long tenancy <sup>2</sup>;
- (b) service charges;
- (c) payments by way of rentcharge within the meaning of section 1 of the Rentcharges Act 1977(a);
- (d) payments under a co-ownership scheme;
- (e) payments under or relating to a tenancy or licence of a Crown tenant;
- (f) where the dwelling occupied as the home is a tent, payments in respect of the tent and the site on which it stands.

<sup>2</sup>Words omitted in para. 13(1)(a) by reg. 14(5)(a) of S.I. 2006/2378 as from 1.10.06.

(a) 1977 c. 30.

(2) Subject to sub-paragraph (3), the deductions to be made from the weekly amounts to be met under this paragraph are—

- (a) where the costs are inclusive of any of the items mentioned in paragraph 5(2) of Schedule I to the Housing Benefit (General) Regulations 1987<sup>(a)</sup> (payment in respect of fuel charges), the deductions prescribed in that paragraph unless the claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, in which case the estimated amount;
- (b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule I to the Housing Benefit (General) Regulations 1987 (ineligible service charges) the amounts attributable to those ineligible service charges or where that amount is not separated from or separately identified within the housing costs to be met under this paragraph, such part of the payments made in respect of those housing costs which are fairly attributable to the provision of those ineligible services having regard to the costs of comparable services;
- (c) any amount for repairs and improvements, and for this purpose the expression “repairs and improvements” has the same meaning it has in paragraph 12(2).

(3) Where arrangements are made for the housing costs, which are met under this paragraph and which are normally paid for a period of 52 weeks, to be paid instead for a period of 53 weeks, or to be paid irregularly, or so that no such costs are payable or collected in certain periods, or so that the costs for different periods in the year are of different amounts, the weekly amount shall be the amount payable for the year divided by 52.

(4) Where the claimant or the claimant’s partner—

- (a) pays for reasonable repairs or redecorations to be carried out to the dwelling he occupies; and
- (b) that work was not the responsibility of the claimant or his partner; and
- (c) in consequence of that work being done, the costs which are normally met under this paragraph are waived,

then those costs shall, for a period not exceeding 8 weeks, be treated as payable.

(5) Where in England and Wales an amount calculated on a weekly basis in respect of housing costs specified in sub-paragraph (1)(e) (Crown tenants) includes water charges, that amount shall be reduced—

- (a) where the amount payable in respect of water charges is known, by that amount;
- (b) in any other case, by the amount which would be the likely weekly water charge had the property not been occupied by a Crown tenant.

►<sup>1</sup>(6) In this paragraph—

- (a) “co-ownership scheme” means a scheme under which a dwelling is let by a housing association and the tenant, or his personal representative, will, under the terms of the tenancy agreement or of the agreement under which he became a member of the association, be entitled, on his ceasing to be a member and subject to any condition stated in either agreement, to a sum calculated by reference directly or indirectly to the value of the dwelling;
- (b) “Crown tenant” means a person who occupies a dwelling under a tenancy or licence where the interest of the landlord belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department except (in the case of an interest belonging to Her Majesty in right of the Crown) where the interest is under the management of the Crown Estate Commissioners;
- (c) “housing association” has the meaning assigned to it by section 1(1) of the Housing Associations Act 1985<sup>(b)</sup>;

<sup>1</sup>Sub-para. (6) inserted in para. 13 by reg. 23(1)(iii) of S.I. 2002/3019 as from 6.10.03.

(a) S.I. 1987/1971.

(b) 1985 c. 69.

- (d) “long tenancy” means a tenancy granted for a term of years certain exceeding twenty one years, whether or not the tenancy is, or may become, terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture (or, in Scotland, irritancy) or otherwise and includes a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal unless it is a lease by sub-demise from one which is not a long tenancy.◀

#### Persons residing with the claimant

**14.—(1)** Subject to the following provisions of this paragraph, the following deductions from the amount to be met under the preceding paragraphs of this Schedule in respect of housing costs shall be made—

- ▶<sup>1</sup>(a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work, ▶<sup>2</sup>£94.50◀;
- (b) in respect of a non-dependant aged 18 or over to whom paragraph (a) does not apply, ▶<sup>2</sup>£14.65◀.◀

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph ▶<sup>3</sup>(1)(a)◀ applies because he is in remunerative work, where the claimant satisfies the Secretary of State that the non-dependant’s gross weekly income is—

<sup>1</sup>Sub-para. (a) & (b) substituted for (a)-(c) by reg. 7(5)(b) of S.I. 2004/2327 as from 5.4.05.

<sup>2</sup>Amounts substituted in para. 14(1)(a) & (b) by reg. 4(3)(a) & (b) of S.I. 2016/242 as from 11.4.16.

<sup>3</sup>Words in para. 14(2) substituted by para. 9(g)(i) of the Sch. to S.I. 2002/3197 as from 6.10.03.

## Sch. 2

- (a) less than ►<sup>1</sup>£133.00◄, the deduction to be made under this paragraph shall be the deduction specified in sub-paragraph ►<sup>2</sup>(1)(b)◄;
- (b) not less than ►<sup>1</sup>£133.00◄ but less than ►<sup>1</sup>£195.00◄, the deduction to be made under this paragraph shall be ►<sup>1</sup>£33.65◄;
- (c) not less than ►<sup>1</sup>£195.00◄ but less than ►<sup>1</sup>£253.00◄, the deduction to be made under this paragraph shall be ►<sup>1</sup>£46.20◄;
- (d) not less than ►<sup>1</sup>£253.00◄ but less than ►<sup>1</sup>£338.00◄, the deduction to be made under this paragraph shall be ►<sup>1</sup>£75.60◄;
- (e) not less than ►<sup>1</sup>£338.00◄ but less than ►<sup>1</sup>£420.00◄, the deduction to be made under this paragraph shall be ►<sup>1</sup>£86.10◄.

<sup>1</sup>Amounts in para. 14(2)(a)-(e) substituted by reg. 4(3)(c)-(g) of S.I. 2016/242 as from 11.4.16.

<sup>2</sup>Words substituted in para. 14(2)(a) by reg. 14(5)(b)(i) of S.I. 2006/2378 as from 1.10.06.

(3) Only one deduction shall be made under this paragraph in respect of partners and where, but for this sub-paragraph, the amount that would fall to be deducted in respect of one partner is higher than the amount (if any) that would fall to be deducted in respect of the other partner, the higher amount shall be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of partners, only one deduction shall be made in respect of the partners based on the partners' joint weekly income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are partners), the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the housing costs in respect of the dwelling occupied as the home payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying the dwelling occupied as the home of the claimant, if the claimant or any partner of his is—

- <sup>3</sup>(a) certified as severely sight impaired or blind by a consultant ophthalmologist, or who is within 28 weeks of ceasing to be so certified; or◄
- (b) receiving in respect of himself either—
  - (i) an attendance allowance; ►<sup>4</sup>◄
  - (ii) the care component of the disability living allowance ; ►<sup>5</sup>◄
  - <sup>4</sup>(iii) the daily living component of personal independence payment◄ ►<sup>5</sup>or
  - (iv) armed forces independence payment.◄

<sup>3</sup>Para. 14(6)(a) substituted by reg. 3(4)(b)(ii) of S.I. 2014/2888 as from 26.11.14.

<sup>4</sup>Para. 14(6)(b)(iii) inserted by para. 27(5)(b) of Sch. to S.I. 2013/388 as from 8.4.13.

<sup>5</sup>Words omitted in para. 14(6)(b)(ii), word & para. 14(6)(b)(iv) inserted in Sch. 2 by para. 23(5)(b) & (c) of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>6</sup>Words substituted in para. 14(7)(b) by reg. 5(4)(c) of S.I. 2008/2767 as from 17.11.08.

(7) No deduction shall be made in respect of a non-dependant—

- (a) if, although he resides with the claimant, it appears to the Secretary of State that the dwelling occupied as his home is normally elsewhere; or
- (b) if he is in receipt of a training allowance paid in connection with ►<sup>6</sup>Youth training◄ established under section 2 of the Employment and Training Act 1973(a) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(b); or
- (c) if he is a full-time student during a period of study or, if he is not in remunerative work, during a recognised summer vacation appropriate to his course; or
- <sup>7</sup>(cc) if he is a full-time student and the claimant or his partner has attained the age of 65;◄
- (d) if he is aged under 25 and in receipt of income support or an income-based jobseeker's allowance; or
- <sup>8</sup>(dd) in respect of whom a deduction in the calculation of a rent rebate or allowance falls to be made under regulation 55 (non-dependant deductions) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006; or◄

<sup>7</sup>Sub-para. (7)(cc) inserted in para. 14 by para. 9(g)(ii) of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>8</sup>Sub-para. (7)(dd) added by reg. 14(5)(b)(ii) of S.I. 2006/2378 as from 2.10.06.

(a) 1973 c. 50.

(b) 1990 c. 35.

**Sch. 2**

<sup>1</sup>Words substituted in para. 14(7)(e) by reg. 8(4)(b) of S.I. 2005/3360 as from 10.4.06.

<sup>2</sup>Words substituted in para. 14(7)(e) by reg. 8(2) of S.I. 2003/1195 as from 21.5.03.

<sup>3</sup>Word “or” and para. 14(7)(f) inserted by reg. 7(5)(b)(ii) of S.I. 2004/2327 as from 5.4.05.

<sup>4</sup>Para. 14(7)(g) added by reg. 4(8)(e) of S.I. 2008/1554 as from 27.10.08.

<sup>5</sup>Words in para. 14(7)(g) inserted by reg. 6(3)(b) of S.I. 2013/443 as from 2.4.13.

<sup>6</sup>Words omitted in para. 14(7)(g) by reg. 41(4) of S.I. 2008/2428 as from 27.10.08.

<sup>7</sup>Para. 14(7)(h) & para. 9 inserted by reg. 33(6)(b)(i) & (ii) of S.I. 2013/630 as from 29.4.13.

<sup>8</sup>Words substituted in para. 14(8)(a) by para. 27(5)(b) of Sch. to S.I. 2013/388 as from 8.4.13.

<sup>9</sup>Words inserted in para. 14(8)(a) of Sch. 2 by para. 23(5)(d) of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>10</sup>Words inserted in para. 14(8)(b) by reg. 6(3)(b) of S.I. 2010/641. See reg. 1 to this S.I. for relevant effective date.

<sup>11</sup>Words inserted in para. 14(8)(b) of Sch. 2 by reg. 15(5) of S.I. 2011/2425 as from 31.10.11.

<sup>12</sup>Word substituted in para. 14(8)(b) by reg. 5(4)(d) of S.I. 2008/2767 as from 17.11.08.

- (e) if he is not residing with the claimant because he has been ►<sup>1</sup>an in-patient residing in a hospital or similar institution◄ for a period in excess of ►<sup>2</sup>52◄ weeks, or is a prisoner; and in calculating any period of ►<sup>2</sup>52◄ weeks, any 2 or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period ►<sup>3</sup>or
- (f) if he is in receipt of state pension credit.◄
- <sup>4</sup>(g) if he is aged less than 25 and is in receipt of ►<sup>5</sup>income-related◄ employment and support allowance which does not include an amount under section ►<sup>6</sup>◄ 4(4) or (5) of the Welfare Reform Act (components)◄<sup>7</sup>; or
- (h) if he is aged less than 25 and is entitled to an award of universal credit which is calculated on the basis that he does not have any earned income◄
- (8) In the case of a non-dependant to whom sub-paragraph (1) applies because he is in remunerative work, there shall be disregarded from his gross income—
- (a) any attendance allowance►<sup>8</sup>, disability living allowance►<sup>9</sup>, armed forces independence payment◄ or personal independence payment◄ or disability living allowance received by him;
- (b) any payment from the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), the Fund, the Eileen Trust►<sup>10</sup>, MFET Limited◄►<sup>11</sup>, the Skipton Fund, the Caxton Foundation◄ or the Independent Living ►<sup>12</sup>Fund (2006)◄; and
- (c) any payment in kind.
- <sup>7</sup>(9) For the purposes of sub-paragraph (7)(h), “earned income” has the meaning given in regulation 52 of the Universal Credit Regulations 2013.◄

**Rounding of fractions**

**15.** Where any calculation made under this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.



## SCHEDULE III

## SPECIAL GROUPS

**Polygamous marriages**

1.—(1) The provisions of this paragraph apply in any case to which section 12 (polygamous marriages) applies if the claimant is taken to be “the person in question” for the purposes of that section.

(2) The following provision shall apply instead of section 3(1)–

“(1) The first condition is that, if the claimant is taken to be “the person in question” for the purposes of section 12 (polygamous marriages),–

- (a) the case is one to which that section applies; and
- (b) any one or more of the persons falling within subsection (1)(c) of that section has attained the age of 65.”.

<sup>1</sup>Words in para. 1(2) omitted and words inserted in para. 1(8) by reg. 23(m)(i)(aa) & (bb) of S.I. 2002/3019 as from 6.10.03

(3) The following provision shall apply instead of section 4(1)–

“(1) A claimant is not entitled to state pension credit if, taking the claimant to be “the person in question” for the purposes of section 12 (polygamous marriages),–

- (a) the case is one to which that section applies; and
- (b) any one or more of the other persons falling within subsection (1)(c) of that section is entitled to state pension credit.”.

(4) The following provision shall apply instead of section 5–

**“5. Income and capital of claimant, spouses etc.**

(1) This section applies in any case to which section 12 (polygamous marriages) applies if the claimant is taken to be “the person in question” for the purposes of that section.

(2) In any such case, the income and capital of each of the other persons falling within subsection (1)(c) of that section shall be treated for the purposes of this Act as income and capital of the claimant, except where regulations provide otherwise”.

(5) In regulation 6 (amount of the guarantee credit), for paragraph (1) there shall be substituted–

“(1) Except as provided in the following provisions of these Regulations, in a case to which section 12 (polygamous marriages) applies if the claimant is taken to be “the person in question” for the purposes of that section the standard minimum guarantee is the sum of–

- (a)  $\text{£}237.55$  per week in respect of the claimant and any one spouse of the claimant’s; and
- (b)  $\text{£}81.95$  per week in respect of for each additional spouse (whether of the claimant or that spouse) who falls within section 12 (1)(c).”.

<sup>2</sup>Amounts substituted in para. 1(5) & (7) of Sch. 3 by reg. 4(4)(a) & (b) of S.I. 2016/242 as from 11.4.16.

(6) The maximum savings credit shall be determined on the assumption that the standard minimum guarantee is the amount prescribed for partners under regulation 6(1)(a).

(7) In regulation 7 (savings credit) for paragraph (2) there shall be substituted–

“(2) In any case to which section 12 (polygamous marriages) applies if the claimant is taken to be “the person in question” for the purposes of that section, the amount prescribed for the savings credit threshold is  $\text{£}212.97$ ”.

<sup>3</sup>Words inserted in para. 1(7) by para. 10(a) of the Sch. to S.I. 2002/3197 as from 6.10.03.

(8) In regulations 4, 5, 6(8), 10, 12 and 14 and in paragraph 6(5)(b)(v) of Schedule 1 and in Schedule 2, any reference to a partner includes also a reference to any additional spouse to whom this paragraph applies.

<sup>4</sup>Number omitted in para. 1(8) by reg. 3(5) of S.I. 2008/2424 as from 6.10.08.

<sup>5</sup>Numbers in para 1(8) substituted by reg 2(10) of S.I. 2003/2274 as from 6.10.03.

## Sch. 3

<sup>1</sup>Words substituted in para. 1(9) by para. 27(6) of Sch. to S.I. 2013/388 as from 8.4.13.

<sup>2</sup>Words inserted in para. 1(9) of Sch. 3 by para. 23(6) of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>3</sup>Heading to para. 2 & para. 2(1) substituted by reg. 4(3)(a) & (b) of S.I. 2010/442 as from 25.3.10.

<sup>4</sup>Para. 2 substituted by reg. 8(5) of S.I. 2005/3360 as from 10.4.06.

<sup>5</sup>Words in para. 2(2)(a) of Sch. 3 added by reg. 4(4) of S.I. 2006/588. For date of when to apply see S.I. 2006/588 reg. 1(8).

(9) For the purposes of regulation 6(5)(a) and (b), paragraph 1(1)(b)(i) of Part I of Schedule I is satisfied only if both partners and each additional spouse to whom this paragraph applies are in receipt of attendance allowance<sup>1</sup>, 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 the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78(3) of the 2012 Act<sup>2</sup> or armed forces independence payment<sup>3</sup>.

(10) For the purposes of regulation 6(5)(a), paragraph 1(1)(c) of Part I of Schedule I is only satisfied if—

- (a) both partners and each additional spouse to whom this paragraph applies all fall within either paragraph 1(1)(c)(i) or paragraph 1(1)(c)(ii); and
- (b) at least one of them falls within paragraph 1(1)(c)(i); and
- (c) at least one of them falls within paragraph 1(1)(c)(ii) but not paragraph 1(1)(c)(i); and
- (d) either paragraph 1(1)(c)(iv) is satisfied or a person is entitled to and in receipt of an allowance under section 70 of the 1992 Act in respect of caring for one or more, but not all, the persons who fall within paragraph 1(1)(c)(i).

(11) Any reference in this paragraph to an additional spouse to whom this paragraph applies is a reference to any person who is an additional spouse (whether of the claimant's or of a spouse of the claimant's) falling within subsection (1)(c) of section 12 if the claimant is taken to be "the person in question" for the purposes of that section.

**<sup>3</sup>Persons serving a sentence of imprisonment detained in hospital<sup>4</sup>**

<sup>4</sup>2.—<sup>1</sup>(1) Sub-paragraph (2) applies in the case of a claimant ("C") who satisfies either of the following conditions.

(1A) The first condition is that—

- (a) C is being detained under section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentences of imprisonment etc.); and
- (b) in any case where there is in relation to C a release date within the meaning of section 50(3) of that Act, C is being detained on or before the day which the Secretary of State certifies to be that release date.

(1B) The second condition is that C is being detained under—

- (a) section 59A of the Criminal Procedure (Scotland) Act 1995 (hospital direction); or
- (b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment of mental disorder).<sup>5</sup>

(2) In the case of a claimant to whom paragraph (1) applies—

- (a) section 2(3) has effect with the substitution of a reference to a nil\* amount for the reference to the standard minimum guarantee in paragraph (a)<sup>5</sup>, and nil\* is the prescribed additional amount for the purposes of paragraph (b)<sup>4</sup>; and
- (b) the maximum amount of savings credit shall be taken to be nil\*.<sup>4</sup>

\*Amount 'nil' in para. 2(2) maintained in force by art. 21(6) & Sch. 13 of S.I. 2015/457 on or after 6.4.15. See art. 1(2)(i) of the S.I. for when to apply in certain situations.

►<sup>1</sup>SCHEDULE IIIA

Regulation 12

<sup>1</sup>Sch. IIIA inserted by reg. 2(4) of S.I. 2015/1529 as from 6.4.16.

Date on which certain fixed length assessed income periods end

| <i>Column 1</i><br><i>Period in which the assessed income period would end apart from regulation 12(d)</i> | <i>Column 2</i><br><i>Date on which assessed income period is to end</i> |
|--|--|
| 1st April 2019 to 14th April 2019  | 14th July 2016   |
| 15th April 2019 to 30th April 2019   | 28th July 2016   |
| 1st May 2019 to 14th May 2019  | 14th August 2016   |
| 15th May 2019 to 31st May 2019   | 28th August 2016   |
| 1st June 2019 to 14th June 2019  | 14th October 2016  |
| 15th June 2019 to 30th June 2019   | 28th October 2016  |
| 1st July 2019 to 14th July 2019  | 14th November 2016   |
| 15th July 2019 to 31st July 2019   | 28th November 2016   |
| 1st August 2019 to 14th August 2019  | 14th December 2016   |
| 15th August 2019 to 31st August 2019   | 28th December 2016   |
| 1st September 2019 to 14th September 2019  | 14th February 2017   |
| 15th September 2019 to 30th September 2019   | 28th February 2017   |
| 1st October 2019 to 14th October 2019  | 14th March 2017  |
| 15th October 2019 to 31st October 2019   | 28th March 2017  |
| 1st November 2019 to 14th November 2019  | 14th April 2017  |
| 15th November 2019 to 30th November 2019   | 28th April 2017  |
| 1st December 2019 to 14th December 2019  | 14th June 2017   |
| 15th December 2019 to 31st December 2019   | 28th June 2017   |
| 1st January 2020 to 14th January 2020  | 14th July 2017   |
| 15th January 2020 to 31st January 2020   | 28th July 2017   |
| 1st February 2020 to 14th February 2020  | 14th September 2017  |
| 15th February 2020 to 29th February 2020   | 28th September 2017  |
| 1st March 2020 to 14th March 2020  | 14th October 2017  |
| 15th March 2020 to 31st March 2020   | 28th October 2017  |
| 1st April 2020 to 14th April 2020  | 14th December 2017   |
| 15th April 2020 to 30th April 2020   | 28th December 2017   |
| 1st May 2020 to 14th May 2020  | 14th January 2018  |
| 15th May 2020 to 31st May 2020   | 28th January 2018  |
| 1st June 2020 to 14th June 2020  | 14th March 2018  |
| 15th June 2020 to 30th June 2020   | 28th March 2018  |
| 1st July 2020 to 14th July 2020  | 14th April 2018  |
| 15th July 2020 to 31st July 2020   | 28th April 2018  |
| 1st August 2020 to 14th August 2020  | 14th June 2018   |
| 15th August 2020 to 31st August 2020   | 28th June 2018   |
| 1st September 2020 to 14th September 2020  | 14th July 2018   |
| 15th September 2020 to 30th September 2020   | 28th July 2018   |
| 1st October 2020 to 14th October 2020  | 14th August 2018   |
| 15th October 2020 to 31st October 2020   | 28th August 2018   |
| 1st November 2020 to 14th November 2020  | 14th October 2018  |
| 15th November 2020 to 30th November 2020   | 28th October 2018  |
| 1st December 2020 to 14th December 2020  | 14th November 2018   |
| 15th December 2020 to 31st December 2020   | 28th November 2018   |
| 1st January 2021 to 14th January 2021  | 14th January 2019  |
| 15th January 2021 to 31st January 2021   | 28th January 2019  |
| 1st February 2021 to 14th February 2021  | 14th February 2019   |
| 15th February 2021 to 28th February 2021   | 28th February 2019   |
| 1st March 2021 to 14th March 2021  | 14th March 2019  |
| 15th March 2021 to 5th April 2021  | 28th March 2019◀   |

## SCHEDULE IV

Regulation 17(7)

## AMOUNTS TO BE DISREGARDED IN THE CALCULATION OF INCOME OTHER THAN EARNINGS

1. In addition to any sum which falls to be disregarded in accordance with paragraphs 3 to 6, £10 of any of the following, namely—

- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 2 or 3);
- (b) a war widow's or war widower's pension;
- ▶<sup>1</sup>(ba) unless paragraph 1(a) or (b) applies, any payment described in regulation 15(5)(ac) (except insofar as such a payment falls to be disregarded under paragraph 2 or 3);◀
- (c) a pension payable to a person as a ▶<sup>2</sup>widow, widower or surviving civil partner◀ under ▶<sup>1</sup>◀ 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;
- ▶<sup>3</sup>(cc) a guaranteed income payment ▶<sup>1</sup>and, if the amount of that payment has been abated to less than £10 by a ▶<sup>4</sup>pension or payment falling within article 31(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005◀, so much of ▶<sup>4</sup>that pension or payment◀ as would not, in aggregate with the amount of ▶<sup>4</sup>any◀ guaranteed income payment disregarded, exceed £10◀◀
- (d) a payment made to compensate for the non-payment of such a pension ▶<sup>3</sup>or payment◀ 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 ▶<sup>3</sup>pensions or payments mentioned in sub-paragraphs (a) to (cc) 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.

2. The whole of any amount included in a pension to which paragraph 1 relates in respect of—

- (a) the claimant's need for constant attendance;
- (b) the claimant's exceptionally severe disablement.

3. Any mobility supplement under ▶<sup>1</sup>article 20 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006◀ (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(a) or any payment intended to compensate for the non-payment of such a supplement.

▶<sup>5</sup>4. Any supplementary pension under article 23(2) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (pensions to surviving spouses and surviving civil partners) and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under that Order.◀

5. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983(b) (pensions to ▶<sup>6</sup>widows, widowers or surviving civil partners◀), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

<sup>1</sup>Para. 1(ba) inserted, words omitted in 1(c), added to (cc) and substituted in para. 3 by reg. 4(5)(a)-(d) of S.I. 2008/3157 as from 5.1.09.

<sup>2</sup>Words substituted in para. 1(c) by para. 35(4)(a) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

<sup>3</sup>Para. 1(cc) inserted and words inserted and substituted in para. 1(d) & (e) by reg. 2(7) of S.I. 2005/574 as from 4.4.05.

<sup>4</sup>Words substituted in para. 1(cc) of Sch. 4 by reg. 5(5)(a)-(b) of S.I. 2009/2655. See reg. 1(2)(c) to this S.I. for the relevant commencement date.

<sup>5</sup>Para. 4 substituted by reg. 4(5)(e) of S.I. 2008/3157 as from 5.1.09.

<sup>6</sup>Words substituted in para. 5 by para. 35(4)(c) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

(a) S.I. 1983/686; amended by S.I. 1983/1164 and 1540 and 1986/628.

(b) S.I. 1983/686; the relevant amending Instruments are S.I.1994/715 and 2021.

6.—(1) Any payment which is—

- (a) made under any of the Dispensing Instruments to a ►<sup>1</sup>widow, widower or surviving civil partner◄ 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
- <sup>2</sup>(b) equal to the amount specified in article 23(2) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006.◄

<sup>1</sup>Words substituted in para. 6(1)(a) by para. 35(4)(d)(i) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

<sup>2</sup>Para. 4 and para. 6(1)(b) substituted by reg. 4(5)(e) & (f) of S.I. 2008/3157 as from 5.1.09.

(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).

7. £10 of any widowed parent’s allowance to which the claimant is entitled under section 39A of the 1992 Act(a).

►<sup>3</sup>7A. £10 of any widowed mothers allowance to which the claimant is entitled under section 37 of the 1992 Act.◄

<sup>3</sup>Para. 7A inserted by para. 11(a) of the Sch. to S.I. 2002/3197 as from 6.10.03.

8.—(1) Where the claimant occupies a dwelling as his home 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 respect of any one week in respect of such accommodation provided to such person does not exceed £20.00, 100% of such payments; or
- (b) where the aggregate of any such payments exceeds £20.00, £20.00 and 50% of the excess over £20.00.

(2) ►<sup>4</sup>◄

<sup>4</sup>Sub-para. (2) of para. 8 omitted by reg. 6(5) of S.I. 2005/2468 as from 3.10.05.

9. If the claimant—

- (a) owns the freehold or leasehold interest in any property or is a tenant of any property; and
- (b) occupies a part of that property; and
- (c) has an agreement with another person allowing that person to occupy another part of that property on payment of rent and—
  - (i) the amount paid by that person is less than £20 per week, the whole of that amount; or
  - (ii) the amount paid is £20 or more per week, £20.

10. Where a claimant 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% 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 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;
- (c) 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;
- (d) 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; and
- (e) that the interest payable on the loan is paid by the person to whom the loan was made or by one of the annuitants,

(a) S. 39A was inserted by s. 55 of the Welfare Reform and Pensions Act 1999 (c. 30).

## Sch. 4

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>(a)</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.

**11.—**(1) Any payment, other than a payment to which sub-paragraph (2) applies, made to the claimant by Trustees in exercise of a discretion exercisable by them.

(2) This sub-paragraph applies to payments made to the claimant by Trustees in exercise of a discretion exercisable by them for the purpose of—

- (a) obtaining food, ordinary clothing or footwear or household fuel;
- (b) the payment of rent, council tax or water charges for which that claimant or his partner is liable;
- (c) meeting housing costs of a kind specified in Schedule 2;
- (d) ►<sup>1</sup>◄

(3) In a case to which sub-paragraph (2) applies, £20 or—

- (a) If the payment is less than £20, the whole payment; or
- (b) if, in the claimant's case, £10 is disregarded in accordance with paragraph 1(a) to (f) ►<sup>1</sup> or paragraph 7◄<sup>2</sup> or 7A◄, £10 or the whole payment if it is less than £10.

(4) For the purposes of this paragraph—

“ordinary clothing and footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing and footwear used solely for sporting activities; and

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

**12.** Any increase in ►<sup>3</sup>pension or allowance under Part 2 or 3 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006◄<sup>(c)</sup> paid in respect of a dependent other than the pensioner's ►<sup>3</sup>◄ ►<sup>4</sup>partner◄.

**13.** Any payment ordered by a court to be made to the claimant or the claimant's partner in consequence of any accident, injury or disease suffered by ►<sup>2</sup>the person◄ to whom the payments are made.

**14.** Periodic payments made to the claimant or the claimant's partner under an agreement entered into in ►<sup>2</sup>◄ settlement of a claim made by ►<sup>2</sup>that person◄ for an injury suffered by him.

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

**16.** Any banking charges or commission payable in converting to Sterling payments of income made in a currency other than Sterling.

**17.** ►<sup>5</sup>◄

►<sup>6</sup>**18.** Except in the case of income from capital specified in Part II of Schedule V, any actual income from capital.◄

<sup>1</sup>In para. 11, sub-para. (2)(d) omitted & words inserted in (3)(b) by reg. 23(n) of S.I. 2002/3019 as from 6.10.03.

<sup>2</sup>Words inserted, substituted & omitted in para. 11(3)(b), 13 & 14 by para. 11(b)-(d) of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>3</sup>Words in para. 12 substituted & omitted by reg. 4(5)(g)(i) & (ii) of S.I. 2008/3157 as from 5.1.09.

<sup>4</sup>Words inserted in para. 12 by para. 35(4)(e) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

<sup>5</sup>Para. 17 deleted by reg. 4(5)(h) of S.I. 2008/3157 as from 5.1.09.

<sup>6</sup>Para. 18 inserted by reg. 2(11)(f) of S.I. 2003/2274 as from 6.10.03.

(a) 1988 c. 1; subsection (1A) was inserted by the Finance Act 1994 (c. 9), s. 81(3).

(b) S.I. 1987/1971; see regs. 2(1) and 10.

(c) S.I. 1983/883.

## SCHEDULE V

Regulation 17(8)

Sch. 5

## INCOME FROM CAPITAL

## PART I

*Capital disregarded for the purpose of calculating income*

1. Any premises acquired for occupation by the claimant which he intends to occupy as his home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises.

▶<sup>1</sup>1A. The dwelling occupied by the claimant as his home but only one home shall be disregarded under this paragraph. ◀

<sup>1</sup>Para 1A. inserted by reg. 2(12)(a) of S.I. 2003/2274 as from 6.10.03.

2. Any premises which the claimant intends to occupy as his home, and 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 of those premises.

3. Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

4. Any premises occupied in whole or in part—

- (a) by a ▶<sup>2</sup>person who is a close relative, grandparent, grandchild, uncle, aunt, nephew or niece of the claimant or of his partner ◀ as his home where that person ▶<sup>3</sup>has attained the qualifying age for state pension credit or is incapacitated ◀
- (b) by the former partner of the claimant as his home; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced ▶<sup>4</sup>or with whom he had formed a civil partnership that has been dissolved ◀.

<sup>2</sup>Words in para. 4(a) substituted by reg. 7(6) of S.I. 2004/2327 as from 4.10.04.

<sup>3</sup>Words in para. 4(a) substituted by reg. 23(2) of S.I. 2009/1488 as from 6.4.10.

<sup>4</sup>Words inserted in paras. 4(b) & 6(1) by para. 35(5)(a) & (b) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

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

6.—(1) Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from ▶<sup>4</sup>, or dissolution of his civil partnership with, ◀ 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 as the home by the former partner who is a lone parent, for so long as it is so occupied.

(2) In this paragraph—

- (a) “dwelling” includes any garage, garden and outbuildings, which were formerly occupied by the claimant as his home and 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;
- (b) “lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child; and
- (c) “child” means a person ▶<sup>5</sup>who is a qualifying young person or ◀ a child for the purposes of Part IX of the 1992 Act (a).

<sup>5</sup>Words in para. 6(2)(c) of Sch. 5 substituted by reg. 6(5)(a) of S.I. 2006/718 as from 10.4.06.

7. Any premises where the claimant is taking reasonable steps to dispose of the whole of his interest in 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.

(a) See s. 142(1) of the 1992 Act.

## Sch. 5

## 8. All personal possessions.

9. The assets of any business owned in whole or in part by the claimant and for the purposes of which he is engaged as a self-employed earner or, if he has ceased to be engaged, for such period as may be reasonable in the circumstances to allow for disposal of those assets.

<sup>1</sup>Para. 9A inserted by reg. 23(o)(i) of S.I. 2002/3019 as from 6.10.03.

▶<sup>1</sup>9A. The assets of any business owned in whole or in part by the claimant if—

- (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▶<sup>2</sup>◀◀.

<sup>2</sup>Words in paras. 9A, 13(1)(a) & (c), (3)(a) & (c) deleted, words in 13(1)(b), (2) & (3)(b) inserted & words in 13(1), (2), (a) & (b), (3) & (3)(b) substituted by reg. 2(12)(b) & (c)(i) - (xi) of S.I. 2003/2274 as from 6.10.03.

10. The surrender value of any policy of life insurance.

11. The value of any funeral plan contract; and for this purpose, “funeral plan contract” means a contract under which—

- (a) the claimant makes one or more payments to another person (“the provider”);
- (b) the provider undertakes to provide, or secure the provision of, a funeral in the United Kingdom for the claimant on his death; and
- (c) the sole purpose of the plan is to provide or secure the provision of a funeral for the claimant on his death.

<sup>3</sup>Word in para. 12 substituted by para. 12(a) of the Sch. 10 S.I. 2002/3197 as from 6.10.03.

12. Where an ex-gratia payment has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or ▶<sup>3</sup>internment◀ of—

- (a) the claimant;
- (b) the claimant’s partner;
- (c) the claimant’s deceased spouse ▶<sup>4</sup>or deceased civil partner◀; or
- (d) the claimant’s partner’s deceased spouse ▶<sup>4</sup>or deceased civil partner◀,

<sup>4</sup>Words inserted in para. 12(c) & (d) by para. 35(5)(c) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

by the Japanese during the Second World War, an amount equal to that payment.

13.—(1) Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a claimant’s partner ▶<sup>2</sup>who is◀—

- (a) ▶<sup>2</sup>◀ a diagnosed person;
- (b) ▶<sup>2</sup>a diagnosed person’s partner or◀ was a diagnosed person’s partner at the time of the diagnosed person’s death;
- (c) ▶<sup>2</sup>◀ a parent of a diagnosed person, a person acting in place of the diagnosed person’s parents or a person who was so acting at the date of the diagnosed person’s death.

(2) Where ▶<sup>2</sup>a trust payment is made to◀—

- (a) ▶<sup>2</sup>a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph◀ shall apply for the period beginning on the date on which the trust is made and ending on the date on which ▶<sup>2</sup>that person◀ dies;
- (b) ▶<sup>2</sup>a person referred to in sub-paragraph (1)(c), that sub-paragraph◀, it shall apply for the period beginning on the date on which the trust payment is made and ending two years after that date.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to a claimant or a claimant’s partner ▶<sup>2</sup>who is◀—

- (a) ▶<sup>2</sup>◀ the diagnosed person;
- (b) ▶<sup>2</sup>a diagnosed person’s partner or◀ was a diagnosed person’s partner at the date of the diagnosed person’s death; or
- (c) ▶<sup>2</sup>◀ a parent of a diagnosed person, a person acting in place of the diagnosed person’s parents or a person who was so acting at the date of the diagnosed person’s death.

<sup>5</sup>Words inserted in para. (4)(1) and substituted in (4)(1)(a) by reg. 2(12)(c)(xii)-(xiii) of S.I. 2003/2274 as from 6.10.03.

(4) Where ▶<sup>5</sup>a payment referred to in sub-paragraph (3) is made to◀—

- (a) ▶<sup>5</sup>a person referred to in sub-paragraph (3)(a) or (b), that sub-paragraph◀ shall apply for the period beginning on the date on which the payment is made and ending on the date on which ▶<sup>5</sup>that partner◀ dies;



## Sch. 5

- (b) <sup>1</sup>a person referred to in sub-paragraph (3)(c), that sub-paragraph shall apply for the period beginning on the date on which the payment is made and ending two years after that date.

<sup>1</sup>Words in paras. (4)(1)(b) & (6) substituted by reg. 2(12)(c)(xiv) & (xv) of S.I. 2003/2274 as from 6.10.03.

- (5) In this paragraph, a reference to a person—

- (a) being the diagnosed person's partner;  
(b) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person <sup>2</sup>residing in a care home or an independent hospital. ◀

<sup>2</sup>Words in para. 13(5) substituted by para. 6 of Sch. 5 to S.I. 2005/2687 as from 24.10.05.

- (6) In this paragraph—

“diagnosed person” means a person who has been diagnosed as suffering from, or who, after his death, has been diagnosed as having suffered from, variant <sup>1</sup>Creutzfeldt◀-Jakob disease;

“relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant <sup>1</sup>Creutzfeldt◀-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

“trust payment” means a payment under a relevant trust.

14. <sup>3</sup>(1)◀ The amount of any payment, other than a war disablement pension or a war widow's or widower's pension, to compensate for the fact that the claimant, the claimant's partner, the claimant's deceased spouse <sup>4</sup>or deceased civil partner◀ or the claimant's partner's deceased spouse <sup>4</sup>or deceased civil partner◀—

<sup>3</sup>Para. 14 renumbered 14(1) & sub-para. (2) inserted by reg. 4(6)(a) of S.I. 2008/3157 as from 5.1.09.

- (a) was a slave labourer or a forced labourer;  
(b) had suffered property loss or had suffered personal injury; or  
(c) was a parent of a child who had died,

<sup>4</sup>Words inserted in para. 14 by para. 35(5)(d) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

during the Second World War.

<sup>3</sup>(2) In sub-paragraph (1), “war disablement pension” and “war widow's or widower's pension” include any payment described in regulation 15(5)(ac). ◀

15.—(1) Any payment made under <sup>5</sup>or by◀ the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), the Fund, the Eileen Trust <sup>5</sup>, MFET Limited◀ <sup>6</sup>, the <sup>7</sup>Independent Living Fund (2006)◀ <sup>8</sup>, the Skipton Fund <sup>9</sup>, the Caxton Foundation◀ or the London Bombings Relief Charitable Fund◀◀.

<sup>5</sup>Words inserted in para. 15(1)-(4) by reg. 6(3)(c) & (7) of S.I. 2010/641. See reg. 1 to this S.I. for relevant effective date.

(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 <sup>5</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced <sup>10</sup>or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death◀.

<sup>6</sup>Words substituted in para. 15(1) by reg. 3(4)(d) of S.I. 2004/1141 as from 12.5.04.

<sup>7</sup>Words substituted in para. 15(1) by reg. 5(5) of S.I. 2008/2767 as from 17.11.08.

(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 <sup>10</sup>or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death◀, which derives from a payment made under <sup>5</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of the person who is suffering from haemophilia or who is a qualifying person.

<sup>8</sup>Words substituted in para. 15(1) by reg. 7(3)(a) of S.I. 2005/3391 as from 12.12.05.

<sup>9</sup>Words inserted in para. 15(1) of Sch. 5 by reg. 15(6) of S.I. 2011/2425 as from 31.10.11.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under <sup>5</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers, where—

<sup>10</sup>Words inserted in sub-paras. (2), (3) & (4)(a) of para. 15 by para. 35(5)(e) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

- (a) that person has no partner or former partner from whom he is not estranged or divorced <sup>10</sup>or with whom he has formed a civil partnership that has not been dissolved◀, nor any child who is or had been a member of that person's household; and

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- (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 or a student who has not completed his full-time education and has no parent or step-parent, to any person standing in the place of his parent,

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 ►<sup>1</sup> or by ◀ any of the Trusts to which sub-paragraph (1) refers, 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 ►<sup>2</sup> or with whom he had formed a civil partnership that had not been dissolved◀, nor any child who was or had been a member of his household; 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 or a student who had not completed his full-time education and had no parent or step-parent, to any person standing in place of his parent,

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 Trusts.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund ►<sup>3</sup>, the Eileen Trust ►<sup>1</sup>, MFET Limited◀ ►<sup>4</sup>, the Skipton Fund ►<sup>5</sup>, the Caxton Foundation◀ and the London Bombings Relief Charitable Fund◀◀.

(8) In this paragraph—

“child” means any person ►<sup>6</sup> who is a qualifying young person or◀ a child for the purposes of Part IX of the Contributions and Benefits Act(a) (child benefit);

“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;

“qualifying course” means a qualifying course as defined for the purposes of Parts II and IV of the Jobseeker's Allowance Regulations;

“sandwich course” has the meaning given in regulation 5(2) of the Education (Student Support) Regulations 2001(b), regulation 5(2) of the Education (Student Loans) (Scotland) Regulations 2000(c) or regulation 5(2) of the Education (Student Support) Regulations (Northern Ireland) 2000(d), as the case may be;

“student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking—

- (a) a course of study at an educational establishment; or
- (b) a qualifying course;

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, ►<sup>7</sup> Skills Development Scotland,◀ Scottish Enterprise or Highlands and Islands Enterprise;
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so

<sup>1</sup>Words inserted in para. 15(5) & (7) by reg. 6(3)(c) & (7) of S.I. 2010/641. See reg. 1 to this S.I. for relevant effective date.

<sup>2</sup>Words inserted in para. 15(5)(a) by para. 35(5)(e)(iv) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

<sup>3</sup>Words substituted in para. 15(7) by reg. 3(6)(d) of S.I. 2004/1141 as from 12.5.04.

<sup>4</sup>Words substituted in para. 15(7) by reg. 7(3)(a) of S.I. 2005/3391 as from 12.12.05.

<sup>5</sup>Words inserted in para. 15(7) of Sch. 5 by reg. 15(6) of S.I. 2011/2425 as from 31.10.11.

<sup>6</sup>Words in para. 15(8) of Sch. 5 substituted by reg. 6(5)(b) of S.I. 2006/718 as from 10.4.06.

<sup>7</sup>Words inserted in para. 15(8)(a) by reg. 5(4)(b) of S.I. 2009/583 as from 6.4.09.

(a) See s. 142 of the Social Security Contributions and Benefits Act 1992 (c. 4).

(b) S.I. 2000/951.

(c) S.I. 2000/200.

(d) S.I. 2000/213.

provided or approved by or on behalf of the Secretary of State, ►<sup>1</sup>Skills Development Scotland, ◀ Scottish Enterprise or Highlands and Islands Enterprise,

<sup>1</sup>Words inserted in para. 15(8)(c) by reg. 5(4)(b) of S.I. 2009/583 as from 6.4.09.

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education, other than under arrangements made under section 2 of the Employment and Training Act 1973(a) or is training as a teacher ►<sup>2</sup>◀

**15A.** ►<sup>3</sup>◀

**16.**►<sup>4</sup>—(1)◀ An amount equal to the amount of any payment made in consequence of any personal injury to the claimant or, if the claimant has a partner, to the partner.

►<sup>4</sup>(2) Where the whole or part of the payment is administered—

- <sup>5</sup>(a) by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998, or the Court of Protection, or on behalf of a person where the payment can only be disposed of by order or direction of any such court; ◀
- (b) in accordance with an order made under ►<sup>5</sup>◀ Rule 36.14 of the Ordinary Cause Rules 1993(b) or under Rule 128 of those Rules; or
- (c) in accordance with the terms of a trust established for the benefit of the claimant or his partner,

<sup>2</sup>Words in defn. of “training allowance” omitted by para. 12(b) of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>3</sup>Para. 15A omitted by reg. 7(3)(b) of S.I. 2005/3391 as from 12.12.05.

<sup>4</sup>Para. 16 renumbered as 16(1) & sub-para. (2) inserted by reg.

23(o)(ii) of S.I. 2002/3019 as from 6.10.03.

<sup>5</sup>Words in para. 16(2)(a) substituted and words in sub-para. (b) omitted by reg. 14(6)(a) & (b) of S.I. 2006/2378 as from 2.10.06.

the whole of the amount so administered. ◀

**17.** Any amount specified in paragraphs 18 to 20 ►<sup>6</sup>or 20B◀—

- (a) in a case where there is an assessed income period, until the end of that period or until the expiration of one year from the date of payment, whichever is the later; or
- (b) in any other case, for a period of one year beginning with the date of receipt.

<sup>6</sup>Words inserted in para. 17 & substituted in para. 20(1)(d) by reg. 4(6)(b) & (c) of S.I. 2008/3157 as from 5.1.09.

**18.** Amounts paid under a policy of insurance in connection with the loss of or damage to the property occupied by the claimant as his home and to his personal possessions.

**19.** So much of any amounts paid to the claimant or deposited in the claimant’s name for the sole purpose of—

- (a) purchasing premises which the claimant intends to occupy as his home; or
- (b) effecting essential repairs or alterations to the premises occupied or intended to be occupied by the claimant as his home.

**20.—**(1) Any amount paid—

- (a) by way of arrears of benefit;
- (b) by way of compensation for the late payment of benefit; or
- (c) in lieu of the payment of benefit.
- <sup>7</sup>(d) any payment made by a local authority (including in England a county council), or by the ►<sup>6</sup>Welsh Ministers◀, to or on behalf of the claimant or his partner relating to a service which is provided to develop or sustain the capacity of the claimant or his partner to live independently in his accommodation. ◀►<sup>8</sup>; or
- (e) by way of local welfare provision including arrears and payments in lieu of local welfare provision; or

<sup>7</sup>Sub-para. (1)(d) substituted by reg. 2(12)(d) of S.I. 2003/2274 as from 6.10.03.

<sup>8</sup>Paras, 20(7)(e) & (f) inserted by reg. 6(4) of S.I. 2013/443 as from 2.4.13.

(a) 1973 c. 50; s. 2 was amended by s. 25(1) of the Employment Act 1988 (c. 19), by Part I of Sch. 7 to the Employment Act 1989 (c. 38) and by s. 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(b) First Sch. to the Sheriff Courts (Scotland) Act 1907 (c. 51) as substituted in respect of causes commenced on or after 1 January 1994 by S.I. 1993/1956; the relevant amending Instrument is S.I. 1996/2167.

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- (f) in consequence of a reduction of council tax under section 13, 13A or 80 of the Local Government Finance Act 1992 (reduction of liability of council tax).◀

(2) In paragraph (1), “benefit” means–

- (a) attendance allowance under section 64 of the Contributions and Benefits Act;
- (b) disability living allowance;
- ▶<sup>1</sup>(ba) personal independence payment;◀
- ▶<sup>2</sup>(bb) armed forces independence payment;◀
- (c) income support;
- (d) income-based jobseeker’s allowance;
- (e) housing benefit;
- (f) state pension credit;
- (g) ▶<sup>3</sup>◀
- (h) ▶<sup>3</sup>an increase of a disablement pension under section 104 of the Contributions and Benefits Act (increase where constant attendance needed), and any further increase of such a pension under section 105 of that Act (increase for exceptionally severe disablement);◀
- (i) any amount included on account of the claimant’s exceptionally severe disablement ▶<sup>3</sup>or need for constant attendance,◀ in a war disablement pension or ▶<sup>4</sup>any other such amount described in regulation 15(5)(ac).◀
- ▶<sup>5</sup>(j) council tax benefit;
- (k) social fund payments;
- (l) child benefit;
- (m) ▶<sup>6</sup>◀
- (n) child tax credit under the Tax Credits Act 2002;◀
- ▶<sup>7</sup>(o) income-related employment and support allowance.◀ ▶<sup>8</sup>;
- (p) universal credit.◀

<sup>1</sup>Para. 20(2)(ba) inserted by para. 27(7) of Sch. to S.I. 2013/388 as from 8.4.13.

<sup>2</sup>Para. 20(2)(bb) inserted in Sch. 5 by para. 23(7) of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>3</sup>Para (g) omitted, para (h) substituted and words inserted in para (i) by reg. 2(12)(e)(i-iii) of S.I. 2003/2274 as from 6.10.03.

<sup>4</sup>Words in para. 20(2)(i) substituted, para. 20A(2)(c) & (d) omitted & sub-paras. (f)-(i) inserted by reg. 4(6)(c)-(e) of S.I. 2008/3157 as from 5.1.09.

<sup>5</sup>Heads. (j) to (n) inserted in para. 20(2) by reg. 23(o)(iii)(bb) of S.I. 2002/3019 as from 6.10.03.

<sup>6</sup>Para (m) omitted by reg. 2(12)(e)(iv) of S.I. 2003/2274 as from 6.10.03.

<sup>7</sup>Para. 20(2)(o) added by reg. 4(9)(a) of S.I. 2008/1554 as from 27.10.08.

<sup>8</sup>Paras. 20(2)(p) & 20A(2)(j) inserted & words in para. 20A(2)(h) omitted by reg. 33(7) of S.I. 2013/630 as from 29.4.13.

<sup>9</sup>Para. 20A substituted by reg. 2(12)(f) of S.I. 2003/2274 as from 6.10.03.

<sup>10</sup>20A(2)(e) added by reg. 4(9)(b) of S.I. 2008/1554 as from 27.10.08.

<sup>11</sup>Words substituted in para. 20(A)(2)(j) by reg. 10(4) of S.I. 2013/2536 as from 29.10.13.

▶<sup>9</sup>20A.—(1) Subject to sub-paragraph (3), any payment of £5,000 or more to which paragraph 20(1)(a), (b) or (c) applies, which has been made to rectify, or to compensate for, an official error relating to a relevant benefit and has been received by the claimant in full on or after the day on which he became entitled to benefit under these Regulations.

(2) Subject to sub-paragraph (3), the total amount of any payment disregarded under–

- (a) paragraph 7(2) of Schedule 10 to the Income Support (General) Regulations 1987(a);
- (b) paragraph 12(2) of Schedule 8 to the Jobseeker’s Allowance Regulations 1996(b);
- (c)–(d) ▶<sup>4</sup>◀
- ▶<sup>10</sup>(e) paragraph 11(2) of Schedule 9 to the Employment and Support Allowance Regulations,◀◀
- ▶<sup>4</sup>(f) paragraph 9(2) of Schedule 6 to the Housing Benefit Regulations 2006(c);
- (g) paragraph 22 of Schedule 6 to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulation 2006(d);
- (h) paragraph 9(2) of Schedule 5 to the Council Tax Benefit Regulations 2006(e); ▶<sup>8</sup>◀
- (i) paragraph 22 of Schedule 4 to the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(f);◀ ▶<sup>8</sup>or
- (j) ▶<sup>11</sup>paragraph 18◀ of Schedule 10 to the Universal Credit Regulations 2013;◀

(a) S.I. 1987/1967. The relevant amending instrument is S.I. 2002/2380.

(b) S.I. 1996/207. The relevant amending instrument is S.I. 2002/2380.

(c) S.I. 2006/213.

(d) S.I. 2006/214.

(e) S.I. 2006/215.

(f) S.I. 2006/216.

where the award during which the disregard last applied in respect of the relevant sum either terminated immediately before the relevant date or is still in existence at that date.

(3) Any disregard which applies under sub-paragraph (1) or (2) shall have effect until the award comes to an end.

(4) In this paragraph—

“the award”, except in sub-paragraph (2), means—

- (a) the award of State Pension Credit under these Regulations during which the relevant sum or, where it is received in more than one instalment, the first instalment of that sum is received; or
- (b) where that award is followed immediately by one or more further awards which begins immediately after the previous award ends, such further awards until the end of the last award, provided that, for such further awards, the claimant—
  - (i) is the person who received the relevant sum;
  - (ii) is the partner of that person; or
  - (iii) was the partner of that person at the date of his death;

“official error”—

- (a) where the error relates to housing benefit <sup>1</sup> has the meaning given by regulation 1(2) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001<sup>(a)</sup>;

<sup>1</sup>Words in para. 20A(4)(a) revoked by Sch. 1 of S.I. 2013/458 as from 1.4.13.

and

- (b) where the error relates to any other relevant benefit, has the meaning given by regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999;

“the relevant date” means the date on which the claimant became entitled to benefit under the Act;

“relevant benefit” means any benefit specified in paragraph 20(2); and

“the relevant sum” means the total payment referred to in sub-paragraph (1) or, as the case may be, the total amount referred to in sub-paragraph (2).<sup>◀</sup>

<sup>2</sup>**20B.** Any arrears of supplementary pension which is disregarded under paragraph 4 of Schedule 4 (amounts to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 5 or 6 of that Schedule.<sup>◀</sup>

<sup>2</sup>Para. 20B inserted by reg. 4(6)(f) of S.I. 2008/3157 as from 5.1.09.

**21.** Where a capital asset is held in a currency other than sterling, any banking charge or commission payable in converting that capital into sterling.

**22.** The value of the right to receive income from an occupational pension scheme or a personal pension scheme.

**23.** The value of a right to receive income from under a retirement annuity contract.

<sup>3</sup>**23A.** Where a person elects to be entitled to a lump sum under Schedule 5 or 5A to the 1992 Act or under Schedule 1 to the Graduated Retirement Benefit Regulations, or is treated as having made such an election, and a payment has been made pursuant to that election, an amount equal to—

<sup>3</sup>Para. 23A inserted by reg. 13(4) of S.I. 2005/2677 as from 6.4.06.

- (a) except where sub-paragraph (b) applies, the amount of any payment or payments made on account of that lump sum;
- (b) the amount of that lump sum,

but only for so long as that person does not change that election in favour of an increase of pension or benefit.<sup>◀</sup>

<sup>4</sup>**23B.** Any payment made under Part 8A of the 1992 Act (entitlement to health in pregnancy grant).<sup>◀</sup>

<sup>4</sup>Para. 23B inserted by reg. 5(5) of S.I. 2009/583 as from 6.4.09.

<sup>5</sup>**23C.** Any payments made by virtue of regulations made under—

<sup>5</sup>Para. 23C inserted in Sch. 5 by reg. 15(7) of S.I. 2011/2425 as from 31.10.11.

(a) S.I. 2001/1002.

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- (a) section 57 (direct payments) of the Health and Social Care Act 2001(a);
- (b) section 12B (direct payments in respect of community care services) of the Social Work (Scotland) Act 1968(b); or
- (c) sections 12A to 12C (direct payments for health care) of the National Health Service Act 2006(c).◀

## PART II

▶<sup>1</sup>*Capital disregarded only for the purposes of determining deemed income*◀

<sup>1</sup>Head. for Part II substituted by reg. 23(o)(iv) of S.I. 2002/3019 as from 6.10.03.

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

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

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

<sup>2</sup>Para. 27 omitted & para. 2B inserted by reg. 2(12)(g)-(13) of S.I. 2003/2274 as from 6.10.03.

**27.** ▶<sup>2</sup>◀

**28.** Where property is held under a trust, other than—

- (a) a charitable trust within the meaning of the Charities Act 1993(d); or
- (b) a trust set up with any payment to which paragraph 16 of this Schedule applies,

and under the terms of the trust, payments fall to be made, or the trustees have a discretion to make payments, to or for the benefit of the claimant or the claimant's partner, or both, that property.

## SCHEDULE VI

Regulation 17(9)

## SUMS DISREGARDED FROM CLAIMANT'S EARNINGS

**1.—**(1) In a case where a claimant is a lone parent, £20 of earnings.

(2) In this paragraph—

- (a) “lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child;
- (b) “child” means a person ▶<sup>3</sup>who is a qualifying young person or◀ a child for the purposes of Part IX of the 1992 Act(e).

<sup>3</sup>Words in para. 1(2)(b) substituted by reg. 6(6) of S.I. 2006/718 as from 10.4.06.

**2.—**(1) In a case of earnings from employment to which sub-paragraph (2) applies, £20.

(2) This paragraph applies to employment—

(a)-(ab) ▶<sup>4</sup>◀

- ▶<sup>4</sup>(a) a part-time fire-fighter employed by a fire and rescue authority under the Fire and Rescue Services Act 2004 or by the Scottish Fire and Rescue Service established under section 1A of the Fire (Scotland) Act 2005;◀

<sup>4</sup>Sub-paras. (a), (aa) & (ab) omitted and (a) inserted by reg. 10(5)(a)-(d) of S.I. 2013/2536 as from 29.10.13.

(a) 2001 c. 15; section 57 was amended by the Health and Social Care Act 2008 (c. 14), section 146(1) to (7). In relation to Wales it was amended by the Social Care Charges (Wales) Measure 2010 (2010 nawm 2), section 16.

(b) 1968 c. 49; section 12B was inserted by the Community Care (Direct Payments) Act 1996 (c. 30), section 4; it was amended by the Regulation of Care (Scotland) Act 2001 (2002 asp 8), section 70; the Community Care and Health (Scotland) Act 2002 (2002 asp 5), section 7 and Schedule 2, paragraph 1(2); and the Adult Support and Protection (Scotland) Act 2007 (2007 asp 10), section 63.

(c) 2006 c. 41; sections 12A to 12C were inserted by the Health Act 2009 (c. 21), section 11.

(d) 1993 c. 10.

(e) See s. 142(1) of the 1992 Act.

- (b) as an auxiliary coastguard in respect of coast rescue activities;
- (c) in the manning or launching of a lifeboat if the employment is part-time.
- ▶<sup>1</sup>(d) a member of any territorial or reserve force prescribed in Part I of Schedule 6 to the Social Security (Contributions) Regulations 2001(a).◀

<sup>1</sup>Sub-para. (d) & para. 2A inserted by para. 13(a) & (c) of the Sch. to S.I. 2002/3197 as from 6.10.03.

▶<sup>1</sup>2A. Where a person is engaged in one or more of the employments specified in paragraph 2 but his earnings derived from those employments are less than £20 in any week and he is also engaged in any other employment, so much of his earnings from that other employment as would not in aggregate with the amount of his earnings disregarded under paragraph 2 exceed £20.◀

▶<sup>2</sup>2B. Where only one member of a couple is in employment specified in paragraph 2(2), so much of the earnings of the other member of the couple as would not, in aggregate with the earnings disregarded under paragraph 2, exceed £20.◀

<sup>2</sup>Para. 27 omitted & para. 2B inserted by reg. 2(12)(g)-(13) of S.I. 2003/2274 as from 6.10.03.

3.—(1) If the claimant or one of the partners is a carer, or both partners are carers, £20 of any earnings received from his or their employment.

(2) In this paragraph the claimant or his partner is a carer if paragraph 4 of Part II of Schedule I (amount applicable for carers) is satisfied in respect of him.

4.—(1) £20 is disregarded if the claimant or, if he has a partner, his partner—

- (a) is in receipt of—
  - (i) long-term incapacity benefit under Section 30A of the 1992 Act(b);
  - (ii) severe disablement allowance under section 68 of that Act;
  - (iii) attendance allowance;
  - (iv) disability living allowance under section 71 to 76 of that Act;
  - (v) any mobility supplement under ▶<sup>3</sup>article 20 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006◀ (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(c); ▶<sup>4</sup>◀
  - ▶<sup>5</sup>(vi) the disability element or the severe disability element of working tax credit under Schedule 2 to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(d); or◀
  - ▶<sup>6</sup>(vii) employment and support allowance; ▶<sup>7</sup>◀◀
  - ▶<sup>7</sup>(viii) personal independence payment; ▶<sup>8</sup>◀◀
  - ▶<sup>5</sup>(ix) armed forces independence payment; or◀
- ▶<sup>9</sup>(b) is or are certified as severely sight impaired or blind by a consultant ophthalmologist.◀

<sup>3</sup>Words substituted in para. 4(1)(a)(v) of Sch. 6 by reg. 4(7) of S.I. 2008/3157 as from 5.1.09.

<sup>4</sup>Word “or” omitted after para. 4(1)(a)(v) by reg. 4(10)(a)(i) of S.I. 2008/1554 as from 27.10.08.

<sup>5</sup>Sub-para. 4(1)(a)(vi) & para. 4A inserted & sub-para. (5) omitted by para. 13(c) & (d) of the Sch. to S.I. 2002/3197 as from 6.10.03.

<sup>6</sup>Sub-para. 4(1)(a)(vii) inserted by reg. 4(10)(a)(ii) of S.I. 2008/1554 as from 27.10.08.

<sup>7</sup>Para. 4(1)(a)(viii) inserted by para. 27(8) of Sch. to S.I. 2013/388 as from 8.4.13.

<sup>8</sup>Word omitted in para. 4(1)(a)(viii) & para. 4(1)(a)(ix) inserted in Sch. 6 by para. 23(8) of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>9</sup>Para. 4(1)(b) substituted by reg. 3(4)(c) of S.I. 2014/2888 as from 26.11.14.

<sup>10</sup>Words substituted in sub-para. (2) by reg. 4(10)(b) of S.I. 2008/1554 as from 27.10.08.

(2) Subject to sub-paragraph (4), £20 is disregarded if the claimant or, if he has a partner, his partner has, within a period of 8 weeks ending on the day in respect of which the claimant first satisfies the conditions for entitlement to state pension credit, had an award of income support▶<sup>10</sup>, income-based jobseeker’s allowance or income-related employment and support allowance◀ and—

- (a) £20 was disregarded in respect of earnings taken into account in that award;
- (b) the person whose earnings qualified for the disregard continues in employment after the termination of that award.

(3) Subject to sub-paragraph (4), £20 is disregarded if the claimant or, if he has a partner, his partner, immediately before attaining pensionable age,—

- (a) had an award of state pension credit; and
- (b) a disregard under paragraph 4(1)(a)(i) or (ii) was taken into account in determining that award.

(a) 2001/1004.

(b) S. 30A was inserted by S.S. (Incapacity for Work) Act 1994 (c. 18).

(c) S.I. 1983/686.

(d) 2002/2005.

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(4) The disregard of £20 specified in sub-paragraphs (2) and (3) applies so long as there is no break, other a break which does not exceed 8 weeks,—

- (a) in a case to which sub-paragraph (2) refers, in a person's entitlement to state pension credit or in employment following the first day in respect of which state pension credit is awarded; or
- (b) in a case where sub-paragraph (3) applies, in the person's entitlement to state pension credit since attaining pensionable age.

<sup>1</sup>Sub-para. 4(1)(a)(vi) & para. 4A inserted & sub-para. (5) omitted by para. 13(c) & (d) of the Sch. to S.I. 2002/3197 as from 6.10.03.

(5) ►<sup>1</sup>◄

►<sup>1</sup>4A.—(1) £20 is the maximum amount which may be disregarded under any of paragraphs 1, 2, 3 or 4 notwithstanding that—

- (a) in the case of a claimant with no partner, he satisfies the requirements of more than one of those paragraphs or, in the case of paragraph 4, he satisfies the requirements of more than one of the sub-paragraphs of that paragraph; or
- (b) in the case of ►<sup>2</sup>couples◄, both partners satisfy one or more of the requirements of paragraphs 2, 3 and 4.

<sup>2</sup>Words substituted in para. 4A(1)(b) by para. 35(6) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

(2) Where, in a case to which sub-paragraph (1)(b) applies, the amount to be disregarded in respect of one of the partners ("the first partner") is less than £20, the amount to be disregarded in respect of the other partner shall be so much of that other partner's earnings as would not, in aggregate with the first partner's earnings, exceed £20.◄

**5.** Except where the claimant or his partner qualifies for a £20 disregard under the preceding provisions of this Schedule—

- (a) £5 shall be disregarded if a claimant who has no partner has earnings;
- (b) £10 shall be disregarded if a claimant who has a partner has earnings.

<sup>3</sup>Words inserted in para. 6 and para. 7 inserted by para. 13(e) & (f) of the Sch. to S.I. 2002/3197 as from 6.10.03.

**6.** Any earnings ►<sup>3</sup>, other than any amount referred to in regulation 17(9)(b),◄ derived from any employment which ended before the day in respect of which the claimant first satisfies the conditions for entitlement to state pension credit.

►<sup>3</sup>7. Any banking charges or commission payable in converting to Sterling payments of earnings made in a currency other than Sterling.◄



**EXPLANATORY NOTE**

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

The Regulations contained in this Instrument are made either by virtue of, or in consequence of, provisions in the State Pension Credit Act 2002 (c. 16) (“the 2002 Act”). This Instrument is made before the expiry of the period of 6 months beginning with the coming into force of those provisions; the regulations in it are therefore exempt in accordance with section 173(5) of the Social Security Administration Act 1992 from the requirement in section 172(2) of that Act to refer proposals to make Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

Part I of these Regulations contains provisions relating to citation, commencement and interpretation.

In Part II of the Regulations, regulations 2 to 5 contain provisions relating to claimants who are absent from Great Britain. Regulations 6 and 7 relate to the amounts of the guarantee credit and savings credit. Provision is included for additional amounts to be included when the claimant or his partner is severely disabled or has housing costs (Schedules 1 and 2).

Regulation 9 specifies the income which is to be taken into account in determining the amount of any savings credit.

Under section 6 of the 2002 Act, assessed income periods are with certain exceptions set when a decision is made awarding state pension credit. Regulations 10 and 12 contain provisions relating to changes in income during the assessed income period and to the ending of that period.

Part III of the regulations contains provision for the calculation of income and capital. “Income” is defined for the purpose of the 2002 Act in section 15(1) of that Act but contains powers enabling further provisions to be made in Regulations. Regulation 15 contains provisions about income, including (at regulation 15(6)) provision for a deemed weekly income on capital over £6,000 (£10,000 if the claimant is in certain residential accommodation) at a rate of £1 for every £500. Other provisions relate to notional income (regulation 18) and income paid to third parties (regulation 24). Regulations 20 to 24 contain provisions relating to the calculation of capital, including capital held outside the United Kingdom, capital jointly held and notional capital; regulation 22 provides for a diminishing notional capital rule. Schedules 4 to 6 provide for certain capital and income to be disregarded in the calculation of the claimant’s capital and income.

Part IV contains separate provision relating to the reduction in state pension credit in a case where the claimant has been convicted of benefit offences on at least 2 separate occasions.

The impact on business of applying these Regulations is minimal and the publication of a regulatory impact assessment is therefore not necessary. A summary of the contents of the assessment made for the State Pension Credit Bill was published at paragraphs 183 and 184 of the Explanatory Notes relating to the Bill. A copy of the summary can be obtained from the Department for Work and Pensions, Regulatory Impact Unit, 3rd Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

