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STATUTORY INSTRUMENTS

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**2006 No. 214**

**SOCIAL SECURITY**

**The Housing Benefit (Persons who have attained the  
qualifying age for state pension credit) Regulations 2006**

<i>Made</i>	- - - -	<i>2nd February 2006</i>
<i>Laid before Parliament</i>		<i>10th February 2006</i>
<i>Coming into force</i>	- -	<i>6th March 2006</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130(2) to (4), 134, 135(1), (2) and (6), 136, 136A(3) and (4)(a), 137 and 175(1) and (3) to (6) of the Social Security Contributions and Benefits Act 1992<sup>(1)</sup>, sections 1(1) and (1C), 5(1)(a) to (d) and (g) to (r) and (6), 7(2), 7A, 75, 113, 122E(3) and (4), 126A, 128A, 134(1A) and (8)(b), 189(1) and (3) to (6) and 191 of the Social Security Administration Act 1992<sup>(2)</sup>, section 122(3) and (5) of the Housing Act 1996<sup>(3)</sup>, and sections 34, 79(1) and (4) and 84 of the Social Security Act 1998<sup>(4)</sup>.

These Regulations are made for the purpose only of consolidating other regulations revoked in the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006<sup>(5)</sup>.

In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

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- (1) 1992 c. 4; section 136A was inserted by the State Pension Credit Act 2002 (c. 16), Schedule 2, paragraph 3; section 137(1) is an interpretation provision and is cited for the meaning of the words “family” and “prescribed”; sections 175(1) and (4) were amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2); and section 175(5) was amended by paragraph 36 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c. 18).
- (2) 1992 c. 5; section 7A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30); section 122E was inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 3; section 126A was inserted by section 11 of the Social Security Administration (Fraud) Act 1997 (c. 47); section 128A was inserted by section 28(2) of the Jobseekers Act 1995 (c. 18); section 189(1) was amended by paragraph 57 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) 1999, Schedule 8 and paragraph 109 of Schedule 7 to the Social Security Act 1998 (c. 14) and Schedule 6 to the Tax Credits Act 2002 (c. 21); section 134 was amended by the Housing Act 1996 (c. 52), Schedule 12, paragraph 1; section 189(4) and (5) was amended by Schedule 8 and paragraph 109 of Schedule 7 to the Social Security Act 1998; section 191 is cited for the meaning of the word “prescribe”.
- (3) 1996 c. 52.
- (4) 1998 c. 14; section 79(1) was amended by paragraphs 12 and 13 of Schedule 4 to the Tax Credits Act 2002; section 84 is cited for the meaning of the word “prescribe”.
- (5) See section 172 of, and paragraph 10 of Part I of Schedule 7 to, the Social Security Administration Act 1992.

## PART 1

### General

#### Citation and commencement

1.—(1) These Regulations may be cited as the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

(2) These Regulations are to be read, where appropriate, with the Consequential Provisions Regulations.

(3) Except as provided in Schedule 4 to the Consequential Provisions Regulations, these Regulations shall come into force on 6th March 2006.

(4) The regulations consolidated by these Regulations are revoked, in consequence of the consolidation, by the Consequential Provisions Regulations.

#### Interpretation

2.—(1) In these Regulations—

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

“the 1973 Act” means the Employment and Training Act 1973(6);

“Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;

“adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996(7);

“the Administration Act” means the Social Security Administration Act 1992;

“appropriate DWP office” means an office of the Department for Work and Pensions dealing with state pension credit or an office which is normally open to the public for the receipt of claims for income support or a jobseeker’s allowance;

“assessment period” means the period determined—

(a) in relation to the earnings of a self-employed earner, in accordance with regulation 37 (calculation of earnings of self-employed earners) for the purpose of calculating the weekly earnings of the claimant; or

(b) in relation to any other income, in accordance with regulation 33 (calculation of weekly income) for the purpose of calculating the weekly income of the claimant;

“attendance allowance” means—

(a) an attendance allowance under Part 3 of the Act;

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

(c) a payment under regulations made in exercise of the power conferred by paragraph 7(2) (b) of Part 2 of Schedule 8 to the Act(8);

(d) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;

(6) 1973 c. 50; amended by the Employment Act 1988 (c. 19), the Employment Act 1989 (c. 38) and the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(7) 1996 c. 18; sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

(8) See in particular paragraph 7(2)(b) of Schedule 8.

(e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983<sup>(9)</sup> or any analogous payment; or

(f) any payment based on need for attendance which is paid as part of a war disablement pension;

“the benefit Acts” means the Act, the Jobseekers Act and the State Pension Credit Act;

“benefit week” means a period of 7 consecutive days commencing upon a Monday and ending on a Sunday;

“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 the provision of that accommodation and 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;

“care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000<sup>(10)</sup> and in Scotland means a care home service within the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001<sup>(11)</sup>;

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

“child tax credit” means a child tax credit under section 8 of the Tax Credits Act;

“the Children Order” means the Children (Northern Ireland) Order 1995<sup>(12)</sup>;

“claim” means a claim for housing benefit;

“claimant” means a person claiming housing benefit;

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

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the Act or the Social Security Act 1975<sup>(13)</sup>;

“the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006<sup>(14)</sup>;

“co-ownership scheme” means a scheme under which the 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 conditions stated in either agreement, to a sum calculated by reference directly or indirectly to the value of the dwelling;

“couple” means—

(a) a man and a woman who are married to each other and are members of the same household;

(b) a man and a woman who are not married to each other but are living together as husband and wife;

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<sup>(9)</sup> S.I. 1983/686; the relevant amending Instruments are S.I. 1983/1164, 1984/1675 and 2001/420.

<sup>(10)</sup> 2000 c. 14.

<sup>(11)</sup> 2001 asp 8.

<sup>(12)</sup> S.I. 1995/755 (N.I. 2).

<sup>(13)</sup> 1975 c. 14.

<sup>(14)</sup> S.I. 2006/217.

- (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 sub-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;

“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;

“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;

“date of claim” means the date on which the claim is made, or treated as made, for the purposes of regulation 64 (time and manner in which claims are to be made);

“the Decisions and Appeals Regulations” means the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(15);

“the designated authority” means any of the following—

- (a) the Secretary of State;
- (b) a person providing services to the Secretary of State;
- (c) a local authority;
- (d) a person providing services to, or authorised to exercise any function of, any such local authority;

“designated office” means the office designated by the relevant authority for the receipt of claims to housing benefit—

- (a) by notice upon or with a form approved by it for the purpose of claiming housing benefit; or
- (b) by reference upon or with such a form to some other document available from it and sent by electronic means or otherwise on application and without charge; or
- (c) by any combination of the provisions set out in sub-paragraphs (a) and (b) above;

“disability living allowance” means a disability living allowance under section 71 of the Act;

“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, any croft land on which the dwelling is situated;

“earnings” has the meaning prescribed in regulation 35 (earnings of employed earners) or, as the case may be, 38 (earnings of self-employed earners);

“the 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;

“eligible rent” is to be construed in accordance with regulation 12 (rent);

“employed earner” is to be construed in accordance with section 2(1)(a) of the Act and also includes a person who is in receipt of a payment which is payable under any enactment having

effect in Northern Ireland and which corresponds to statutory sick pay or statutory maternity pay;

“extended payment (severe disablement allowance and incapacity benefit)” means a payment of housing benefit pursuant to regulation 53;

“family” has the meaning assigned to it by section 137(1) of the Act;

“the former Regulations” means the Housing Benefit (General) Regulations 1987<sup>(16)</sup>;

“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;

“gateway office” means an appropriate DWP office or an office designated by the appropriate authority which is nominated by the Secretary of State as a gateway office and referred to in a notice upon or attached to a form approved by the appropriate authority for the purpose of claiming housing benefit;

“guarantee credit” is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act;

“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<sup>(17)</sup>;

“hostel” means a building—

- (a) in which there is provided for persons generally or for a class of persons, domestic accommodation, otherwise than in separate and self-contained premises, and either board or facilities for the preparation of food adequate to the needs of those persons, or both; and
- (b) which is—
  - (i) managed or owned by a registered housing association; or
  - (ii) operated other than on a commercial basis and in respect of which funds are provided wholly or in part by a government department or agency or a local authority; or
  - (iii) managed by a voluntary organisation or charity and provides care, support or supervision with a view to assisting those persons to be rehabilitated or resettled within the community; and
- (c) which is not—
  - (i) a care home;
  - (ii) an independent hospital; or
  - (iii) an Abbeyfield Home;

“Housing Act functions” has the same meaning as in section 136(1) of the Administration Act;

“housing association” has the meaning assigned to it by section 1(1) of the Housing Associations Act 1985<sup>(18)</sup>;

“an income-based jobseeker’s allowance” and “a joint-claim jobseeker’s allowance” have the same meaning as they have in the Jobseekers Act by virtue of section 1(4) of that Act;

“Income Support Regulations” means the Income Support (General) Regulations 1987<sup>(19)</sup>;

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<sup>(16)</sup> 1987/1971.

<sup>(17)</sup> S.I. 2005/439.

<sup>(18)</sup> 1985 c. 69.

<sup>(19)</sup> S.I. 1987/1967.

“independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000 and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001;

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

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

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

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

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

“Jobseekers Act” means the Jobseekers Act 1995<sup>(20)</sup>;

“Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996<sup>(21)</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;

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

“long 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;

“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988<sup>(22)</sup> by virtue of section 832(1) of that Act;

“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;

(20) 1995 c. 18.

(21) S.I. 1996/207.

(22) 1988 c. 1; the definition of “lower rate” was added by the Finance Act 1992 (c. 20), section 9(9).

“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Part 8 of the Employment Rights Act 1996<sup>(23)</sup>;

“maximum rent” means the amount to which the eligible rent is restricted in a case where regulation 13 applies;

“net earnings” means such earnings as are calculated in accordance with regulation 36 (calculation of net earnings of employed earners);

“net profit” means such profit as is calculated in accordance with regulation 39 (calculation of net profit of self-employed earners);

“non-dependant” has the meaning prescribed in regulation 3;

“non-dependant deduction” means a deduction that is to be made under regulation 55 (non-dependant deductions);

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

“owner” means—

- (a) in relation to a dwelling in England and Wales, the person who, otherwise than as a mortgagee in possession, is for the time being entitled to dispose of the fee simple, whether or not with the consent of other joint owners;
- (b) in relation to a dwelling in Scotland, the proprietor under udal tenure or the proprietor of the dominion utile or the tenant’s or the lessee’s interest in a long tenancy, a kindly tenancy, a lease registered or registerable under the Registration of Leases (Scotland) Act 1857<sup>(24)</sup> or the Land Registration (Scotland) Act 1979<sup>(25)</sup> or a tenant-at-will as defined in section 20(8) of that Act of 1979;

“partner” means—

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

“paternity leave” means a period of absence from work on leave by virtue of section 80A or 80B of the Employment Rights Act 1996<sup>(26)</sup>;

“payment” includes part of a payment;

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

“person affected” shall be construed in accordance with regulation 3 of the Decisions and Appeals Regulations;

“person on income support” means a person in receipt of income support;

“person on state pension credit” means a person in receipt of state pension credit;

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993<sup>(27)</sup> and, in the case of a self-employed earner, includes a scheme approved by the

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(23) 1996 c. 18.

(24) 1857 c. 26.

(25) 1979 c. 33.

(26) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002 (c. 22).

(27) 1993 c. 48; the definition of “personal pension scheme” was substituted by the Welfare Reform and Pensions Act 1999 (c. 30).



Commissioners for Her Majesty's Revenue and Customs under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988;

"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;

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

"qualifying age for state pension credit" means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act)—

- (a) in the case of a woman, pensionable age; or
- (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;

"qualifying course" means a qualifying course as defined for the purposes of Parts 2 and 4 of the Jobseeker's Allowance Regulations;

"qualifying person" means a person in respect of whom payment has been made from the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund;

"relative" means a close relative, grandparent, grandchild, uncle, aunt, nephew or niece;

"relevant authority" means an authority administering housing benefit;

"remunerative work" has the meaning prescribed in regulation 6 (remunerative work);

"rent" includes all those payments in respect of a dwelling specified in regulation 12(1);

"the Rent Officers Order" means the Rent Officers (Housing Benefit Functions) Order 1997<sup>(28)</sup> or, as the case may be, the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997<sup>(29)</sup>;

"retirement annuity contract" means a contract or trust scheme approved under Chapter 3 of Part 14 of the Income and Corporation Taxes Act 1988;

"sandwich course" has the meaning given in regulation 5(2) of the Education (Student Support) Regulations 2002<sup>(30)</sup>, regulation 5(2) of the Education (Student Loans)(Scotland) Regulations 2000<sup>(31)</sup> or regulation 5(2) of the Education (Student Support) Regulations (Northern Ireland) 2002<sup>(32)</sup>, as the case may be;

"savings credit" shall be construed in accordance with sections 1 and 3 of the State Pension Credit Act;

"self-employed earner" is to be construed in accordance with section 2(1)(b) of the Act;

"shared ownership tenancy" means—

- (a) in relation to England and Wales, a tenancy granted on payment of a premium calculated by reference to a percentage of the value of the dwelling or the cost of providing it;
- (b) in relation to Scotland, an agreement by virtue of which the tenant of a dwelling of which he and the landlord are joint owners is the tenant in respect of the landlord's interest in the dwelling or by virtue of which the tenant has the right to purchase the dwelling or the whole or part of the landlord's interest therein;

(28) S.I. 1997/1984; the relevant amending Instrument is S.I. 2000/1, 2001/1325, 2004/2101 and 2005/236.

(29) S.I. 1997/1995(S.144); the relevant amending Instrument is S.I. 2000/3.

(30) S.I. 2002/195.

(31) S.S.I. 2000/200.

(32) S.R. 2002/224.



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

“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;

“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc Act 1993(33) out of sums allocated to it for distribution under that section;

“State Pension Credit Act” means the State Pension Credit Act 2002(34);

“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;

“the Tax Credits Act” means the Tax Credits Act 2002(35);

“tax year” means a period beginning with 6th April in one year and ending with 5th April in the next;

“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, Scottish Enterprise or Highlands and Islands Enterprise, the Learning and Skills Council for England or the National Assembly for Wales;
- (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 provided or approved by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise or the National Assembly for Wales,

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 1973 Act(36) or is training as a teacher;

“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

“war widower’s pension” means any widower’s pension or allowance granted in respect of a death due to service or war injury and payable by virtue of the Air Force (Constitution) Act 1917(37), the Personal Injuries (Emergency Provisions) Act 1939(38), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(39), the Polish Resettlement Act 1947(40) or Part 7 or section 151 of the Reserve Forces Act 1980(41) or a pension or allowance for a widower granted under any scheme mentioned in section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003(42);

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(33) 1993 c. 39; section 23(2) was amended by art.2 of the National Lottery etc. Act 1993 (Amendment of section 23) Order 1996 (S.I. 1996/3095).

(34) 2002 c. 16.

(35) 2002 c. 21.

(36) 1973 c. 50; section 2 was amended by section 25(1) of the Employment Act 1988 (c. 19), by Part I of Schedule 7 to the Employment Act 1989 (c. 38) and by section 47(1) of the Trade Union Reform and Employment Rights Act 1993(c. 19).

(37) 1917 c. 51.

(38) 1939 c. 82.

(39) 1939 c. 83.

(40) 1947 c. 19.

(41) 1980 c. 9.

(42) 2003 c. 1.

“water charges” means—

- (a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part 5 of the Water Industry Act 1991<sup>(43)</sup>;
- (b) as respects Scotland, any water and sewerage charges established by Scottish Water under a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002<sup>(44)</sup>,

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

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act;

“Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002<sup>(45)</sup>;

“young individual” means a single claimant who has not attained the age of 25 years, but does not include such a claimant—

- (a) whose landlord is a registered housing association;
- (b) who has not attained the age of 22 years and has ceased to be the subject of a care order made pursuant to section 31(1)(a) of the Children Act 1989<sup>(46)</sup> which had previously been made in respect to him either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued after he attained that age;
- (c) who has not attained the age of 22 years and was formerly provided with accommodation under section 20 of the Children Act 1989;
- (d) who has not attained the age of 22 years and has ceased to be subject to a supervision requirement by a children’s hearing under section 70 of the Children (Scotland) Act 1995<sup>(47)</sup> (“the 1995 Act”) made in respect of him which had continued after he attained the age of 16 years, other than a case where—
  - (i) the ground of referral was based on the sole condition as to the need for compulsory measures of care specified in section 52(2)(g) of the 1995 Act (commission of offences by child); or
  - (ii) he was required by virtue of the supervision requirement to reside with a parent or guardian of his within the meaning of the 1995 Act, or with a friend or relative of his or of his parent or guardian;
- (e) who has not attained the age of 22 years and has ceased to be a child in relation to whom the parental rights and responsibilities were transferred to a local authority under a parental responsibilities order made in accordance with section 86 of the 1995 Act or treated as so vested in accordance with paragraph 3 of Schedule 3 to that Act, either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued after he attained that age; or
- (f) who has not attained the age of 22 years and has ceased to be provided with accommodation by a local authority under section 25 of the 1995 Act where he has previously been provided with accommodation by the authority under that provision either—
  - (i) after he attained the age of 16 years; or

<sup>(43)</sup> 1991 c. 56.

<sup>(44)</sup> 2002 asp 3; section 29A was inserted by the [Water Services etc. \(Scotland\) Act 2005 \(2005 asp 3\)](#).

<sup>(45)</sup> S.I. 2002/2005.

<sup>(46)</sup> 1989 c. 41.

<sup>(47)</sup> 1995 c. 36.

- (ii) before he attained the age of 16 years, but had continued to be in such accommodation after he attained that age; and

“young person” has the meaning prescribed in regulation 19(1).

(2) References in these Regulations to a person who is liable to make payments shall include references to a person who is treated as so liable under regulation 8 (circumstances in which a person is to be treated as liable to make payments in respect of a dwelling).

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

- (a) in respect of which he satisfies the conditions for entitlement to an income-based jobseeker’s allowance but where the allowance is not paid in accordance with section 19 or 20A of the Jobseekers Act(48) (circumstances in which a jobseeker’s allowance is not payable); or
- (b) which is a waiting day for the purposes of paragraph 4 of Schedule 1 to that Act and which falls immediately before a day in respect of which an income-based jobseeker’s allowance is payable to him or would be payable to him but for section 19 or 20A of that Act; or
- (c) in respect of which he is a member of a joint-claim couple for the purposes of the Jobseekers Act and no joint-claim jobseeker’s allowance is payable in respect of that couple as a consequence of either member of that couple being subject to sanctions for the purpose of section 20A of that Act; or
- (d) in respect of which an income-based jobseeker’s allowance or a joint-claim jobseeker’s allowance would be payable but for a restriction imposed pursuant to section 62 or 63 of the Child Support, Pensions and Social Security Act 2000(49) or section 7, 8 or 9 of the Social Security Fraud Act 2001(50) (loss of benefit provisions).

(4) For the purposes of these Regulations, the following shall be treated as included in a dwelling—

- (a) subject to sub-paragraphs (b) to (d) any land (whether or not occupied by a structure) which is used for the purposes of occupying a dwelling as a home where either—
  - (i) the occupier of the dwelling acquired simultaneously the right to use the land and the right to occupy the dwelling, and, in the case of a person liable to pay rent for his dwelling, he could not have occupied that dwelling without also acquiring the right to use the land; or
  - (ii) the occupier of the dwelling has made or is making all reasonable efforts to terminate his liability to make payments in respect of the land;
- (b) where the dwelling is a caravan or mobile home, such of the land on which it stands as is used for the purposes of the dwelling;
- (c) where the dwelling is a houseboat, the land used for the purposes of mooring it;
- (d) where in Scotland, the dwelling is situated on or pertains to a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993(51), the croft land on which it is situated or to which it pertains.

(5) In these Regulations references to any person in receipt of a guarantee credit, a savings credit or state pension credit includes a reference to a person who would be in receipt thereof but

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(48) Section 20A inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 59 and Schedule 7, paragraph 13.

(49) 2000 c. 19.

(50) 2001 c. 11.

(51) 1993 c. 44.

for regulation 13 of the State Pension Credit Regulations 2002<sup>(52)</sup> (small amounts of state pension credit).

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

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

(2) This paragraph applies to—

- (a) any member of the claimant’s family;
- (b) if the claimant is polygamously married, any partner of his and any child or young person who is a member of his household and for whom he or one of his partners is responsible;
- (c) a child or young person who is living with the claimant but who is not a member of his household by virtue of regulation 21 (circumstances in which a person is to be treated as being or not being a member of the same household);
- (d) subject to paragraph (3), a person who jointly occupies the claimant’s dwelling and is either a co-owner of that dwelling with the claimant or his partner (whether or not there are other co-owners) or is liable with the claimant or his partner to make payments in respect of his occupation of the dwelling;
- (e) subject to paragraph (3)—
  - (i) any person who is liable to make payments on a commercial basis to the claimant or the claimant’s partner in respect of the occupation of the dwelling;
  - (ii) any person to whom or to whose partner the claimant or the claimant’s partner is liable to make payments on a commercial basis in respect of the occupation of the dwelling; or
  - (iii) any other member of the household of the person to whom or to whose partner the claimant or the claimant’s partner is liable to make payments on a commercial basis in respect of the occupation of the dwelling;
- (f) a person who lives with the claimant in order to care for him or a partner of his and who is engaged by a charitable or voluntary organisation which makes a charge to the claimant or his partner for the services provided by that person.

(3) Sub-paragraphs (d) and (e) of paragraph (2) shall not apply to any person who is treated as if he were not liable to make payments in respect of a dwelling under paragraph (1) of regulation 9 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling).

(4) For the purposes of this regulation and regulation 9 a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area within the meaning prescribed in paragraph 8 of Schedule 1 but not if each person is separately liable to make payments in respect of his occupation of the dwelling to the landlord.

### **Cases in which section 1(1A) of the Administration Act is disapplied**

**4.** Section 1(1A) of the Administration Act (requirement to state national insurance number) shall not apply—

- (a) to a claim for housing benefit where the person making the claim, or in respect of whom the claim is made, is liable to make payments in respect of a dwelling which is a hostel;
- (b) to any child or young person in respect of whom housing benefit is claimed.

<sup>(52)</sup> S.I. 2002/1792.

### **Persons who have attained the qualifying age for state pension credit**

5.—(1) Except as provided in paragraph (2), these Regulations apply to a person who has attained the qualifying age for state pension credit.

(2) These Regulations shall not apply in relation to any person if he, or if he has a partner, his partner, is a person on income support or on an income-based jobseeker's allowance.

### **Remunerative work**

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

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

- (a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does 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 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 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, paternity leave or adoption leave, 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
- (b) no other payment is made or is expected to be made to him.

## PART 2

### Provisions affecting entitlement to housing benefit

#### **Circumstances in which a person is or is not to be treated as occupying a dwelling as his home**

7.—(1) Subject to the following provisions of this regulation, a person shall be treated as occupying as his home the dwelling normally occupied as his home—

- (a) by himself or, if he is a member of a family, by himself and his family; or
- (b) if he is polygamously married, by himself, his partners and any child or young person for whom he or any partner of his is responsible and who is a member of that same household,

and shall not be treated as occupying any other dwelling as his home.

(2) In determining whether a dwelling is the dwelling normally occupied as a person's home for the purpose of paragraph (1) regard shall be had to any other dwelling occupied by that person or any other person referred to in paragraph (1) whether or not that dwelling is in Great Britain.

(3) Where a single claimant or a lone parent is a student, other than one to whom regulation 56(1) of the Housing Benefit Regulations 2006<sup>(53)</sup> applies (circumstances in which certain students are treated as not liable to make payments in respect of a dwelling), 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 such payments.

(4) 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 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 normally occupied as his home or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.

(5) Where a person is required to reside in a dwelling which is a bail hostel or probation hostel approved by the Secretary of State under section 9(1) of the Criminal Justice and Court Services Act 2000<sup>(54)</sup>, he shall not be treated as occupying that dwelling as his home.

(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) for a period not exceeding 52 weeks in the case where he has left and remains absent from the former dwelling occupied as his home through fear of violence in that dwelling or by a former member of his family and—
  - (i) it is reasonable that housing benefit should be paid in respect of both his former dwelling and his present dwelling occupied as the home; and
  - (ii) he intends to return to occupy the former dwelling as his home; or
- (b) in the case of a couple or a member of a polygamous marriage, where he or one partner is a student, other than one to whom regulation 56(1) of the Housing Benefit Regulations 2006 applies (circumstances in which certain students are treated as not liable to make payments in respect of a dwelling), or is on a training course and it is unavoidable that the

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<sup>(53)</sup> S.I. 2006/213.

<sup>(54)</sup> 2000 c. 43.

partners should occupy two separate dwellings and reasonable that housing benefit should be paid in respect of both dwellings; or

- (c) in the case where, because of the number of persons referred to in paragraph (1), they have been housed by a housing authority in two separate dwellings; or
- (d) in the case where a person has moved into a new dwelling occupied as the home, except where paragraph (4) applies, for a period not exceeding four benefit weeks if he could not reasonably have avoided liability in respect of two dwellings; or
- (e) in the case where a person—
  - (i) is treated by virtue of paragraph (8) as occupying a dwelling as his home (“the new dwelling”) and sub-paragraph (c)(i) of that paragraph applies; and
  - (ii) he has occupied another dwelling as his home on any day within the period of 4 weeks immediately preceding the date he moved to the new dwelling,

for a period not exceeding 4 benefit weeks immediately preceding the date on which he moved.

(7) Where—

- (a) a person has moved into a dwelling for which he is not liable to make payments (“the new dwelling”); and
- (b) immediately before that move, he was liable to make payments for the dwelling he previously occupied as his home (“the former dwelling”); and
- (c) that liability continues after he has moved into the new dwelling,

he shall be treated as occupying the former dwelling as his home for a period not exceeding four benefit weeks if he could not reasonably have avoided liability in respect of that former dwelling.

(8) Where a person—

- (a) has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
- (b) had claimed housing benefit before moving in and either no decision has yet been made on that claim or it has been refused but a further claim has been made or treated as made within 4 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 that person or any member of his family; or
  - (ii) the move was delayed pending the outcome of an application under Part 3 of the 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 and either a member of the claimant’s family is aged 5 or under or the claimant is a person who has attained or whose partner has attained the qualifying age for state pension credit; or
  - (iii) the claimant became liable to make payments in respect of the dwelling while he was a patient or in residential accommodation,

he shall be treated as occupying the dwelling as his home for any period not exceeding 4 weeks immediately prior to the date on which he moved into the dwelling and in respect of which he was liable to make payments.

(9) Where a person is treated by virtue of paragraph (8) as occupying a dwelling as his home in respect of the period before moving in, his claim for housing benefit in respect of that dwelling shall be treated as having been made on—



- (a) in the case of a claim in respect of which a decision has not yet been made the date that claim was or was treated as made in accordance with regulation 64 (time and manner in which claims are to be made); or
- (b) in the case of a claim for housing benefit in respect of that dwelling which has been refused and a further claim was or was treated as made in accordance with Part 9 (claims) within 4 weeks of the date on which he moved into the dwelling, the date on which the claim was refused or was treated as made; or
- (c) the date from which he is treated by virtue of paragraph (8) as occupying the dwelling as his home,

whichever of those dates is the later.

(10) Where a person to whom neither paragraph (6)(a) nor (16)(c)(x) applies—

- (a) formerly occupied a dwelling but has left and remains absent from it through fear of violence—
  - (i) in the dwelling; or
  - (ii) by a person who was formerly a member of the family of the person first mentioned; and
- (b) has a liability to make payments in respect of that dwelling which is unavoidable,

he shall be treated as occupying the dwelling as his home for a period not exceeding 4 benefit weeks.

(11) This paragraph shall apply to a person who enters residential accommodation—

- (a) for the purpose of ascertaining whether the accommodation suits his needs; and
- (b) with the intention of returning to the dwelling which is normally occupied by him as his home should, in the event, the residential accommodation prove not to suit his needs; and
- (c) while the part of the dwelling which is normally occupied by him as his home is not let, or as the case may be, sublet.

(12) A person to whom paragraph (11) applies shall be treated as if he is occupying the dwelling he normally occupies as his home for a period not exceeding, subject to an overall limit of 52 weeks on the absence from that home, 13 weeks beginning from the first day he enters a residential accommodation.

(13) Subject to paragraph (17) a person shall be treated as occupying a dwelling as his home while he is temporarily absent therefrom for a period not exceeding 13 weeks beginning from the first day of that absence from the home 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; and
- (c) the period of absence is unlikely to exceed 13 weeks.

(14) This paragraph applies to a person who is—

- (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court (other than a person who is detained in hospital under the provisions of the Mental Health Act 1983<sup>(55)</sup>), or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(56)</sup> or the Criminal Procedure (Scotland) Act 1995<sup>(57)</sup>); and

<sup>(55)</sup> 1983 c. 72.

<sup>(56)</sup> 2003 asp 13.

<sup>(57)</sup> 1995 c. 46.

- (b) on temporary release from detention in accordance with Rules made under the provisions of the Prison Act 1952<sup>(58)</sup> or the Prisons (Scotland) Act 1989<sup>(59)</sup>.
- (15) Where paragraph (14) applies to a person, then, for any day when he is on temporary release—
  - (a) if such temporary release was immediately preceded by a period of temporary absence under paragraph (13) or (16), he shall be treated as if he continues to be absent from the dwelling, despite any occupation of the dwelling;
  - (b) for the purposes of paragraph (16)(c)(i), he shall be treated as if he remains in detention; and
  - (c) if he does not fall within sub-paragraph (a), he shall be treated as if he does not occupy his dwelling as his home despite any such occupation of the dwelling.
- (16) This paragraph shall apply to a person who is temporarily absent from the dwelling he normally occupies as his home (“absence”), if—
  - (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, sublet; and
  - (c) he is—
    - (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 section 9 of the Criminal Justice and Court Services Act 2000<sup>(60)</sup>,
    - or, as the case may be, detained pending sentence upon conviction; or
    - (ii) resident in a hospital or similar institution as a patient; or
    - (iii) undergoing, or as the case may be, his partner or his dependant child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation; 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 child 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, in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation; or
    - (viii) a student to whom paragraph (3) or (6)(b) does not apply; or
    - (ix) a person who is receiving care provided in residential accommodation other than a person to whom paragraph (11) applies; or
    - (x) a person who has left the dwelling he occupies as his home through fear of violence, in that dwelling, or by a person who was formerly a member of the family of the person first mentioned, and to whom paragraph (6)(a) does not apply; and

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<sup>(58)</sup> 1952 c. 52.

<sup>(59)</sup> 1989 c. 45.

<sup>(60)</sup> 2000 c. 43.

- (d) the period of his absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

(17) A person to whom paragraph (16) applies shall be treated as occupying the dwelling he normally occupies at his home during any period of absence not exceeding 52 weeks beginning from the first day of that absence.

(18) In this regulation—

“medically approved” means certified by a medical practitioner;

“patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution;

“residential accommodation” means accommodation which is provided in—

- (a) a care home;
- (b) an independent hospital;
- (c) an Abbeyfield Home; or
- (d) an establishment managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament other than a local social services authority;

“training course” means 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, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

### **Circumstances in which a person is to be treated as liable to make payments in respect of a dwelling**

8.—(1) Subject to regulation 9 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling), the following persons shall be treated as if they were liable to make payments in respect of a dwelling—

- (a) the person who is liable to make those payments;
- (b) a person who is a partner of the person to whom sub-paragraph (a) applies;
- (c) a person who has to make the payments if he is to continue to live in the home because the person liable to make them is not doing so and either—
  - (i) he was formerly a partner of the person who is so liable; or
  - (ii) he is some other person whom it is reasonable to treat as liable to make the payments;
- (d) a person whose liability to make such payments is waived by his landlord as reasonable compensation in return for works actually carried out by the tenant in carrying out reasonable repairs or redecoration which the landlord would otherwise have carried out or be required to carry out but this sub-paragraph shall apply only for a maximum of 8 benefit weeks in respect of any one waiver of liability;
- (e) a person who is a partner of a student to whom regulation 56(1) of the Housing Benefit Regulations 2006 (circumstances in which certain students are treated as not liable to make payments in respect of a dwelling) applies.

(2) A person shall be treated as liable to make a payment in respect of a dwelling for the whole of the period in, or in respect of, which the payment is to be made notwithstanding that the liability is discharged in whole or in part either before or during that period and, where the amount which a person is liable to pay in respect of a period is varied either during or after that period, he shall, subject to regulations 59 to 62 (dates of relevant changes of circumstances, weekly amounts and housing benefit for rent free periods), be treated as liable to pay the amount as so varied during the whole of that period.

**Circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling**

9.—(1) A person who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable where—

- (a) the tenancy or other agreement pursuant to which he occupies the dwelling is not on a commercial basis;
- (b) his liability under the agreement is to a person who also resides in the dwelling and who is a close relative of his or of his partner;
- (c) his liability under the agreement is—
  - (i) to his former partner and is in respect of a dwelling which he and his former partner occupied before they ceased to be partners; or
  - (ii) to his partner's former partner and is in respect of a dwelling which his partner and his partner's former partner occupied before they ceased to be partners;
- (d) he is responsible, or his partner is responsible, for a child of the person to whom he is liable under the agreement;
- (e) subject to paragraph (3), his liability under the agreement is to a company or a trustee of a trust of which—
  - (i) he or his partner;
  - (ii) his or his partner's close relative who resides with him; or
  - (iii) his or his partner's former partner,is, in the case of a company, a director or an employee, or, in the case of a trust, a trustee or a beneficiary;
- (f) his liability under the agreement is to a trustee of a trust of which his or his partner's child is a beneficiary;
- (g) subject to paragraph (3), before the liability was created, he was a non-dependant of someone who resided, and continues to reside, in the dwelling;
- (h) he previously owned, or his partner previously owned, the dwelling in respect of which the liability arises and less than five years have elapsed since he or, as the case may be, his partner, ceased to own the property, save that this sub-paragraph shall not apply where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing ownership;
- (i) his occupation, or his partner's occupation, of the dwelling is a condition of his or his partner's employment by the landlord;
- (j) he is a member of, and is wholly maintained (disregarding any liability he may have to make payments in respect of the dwelling he occupies as his home) by, a religious order;
- (k) he is in residential accommodation;
- (l) in a case to which the preceding sub-paragraphs do not apply, the appropriate authority is satisfied that the liability was created to take advantage of the housing benefit scheme established under Part 7 of the Act.

(2) In determining whether a tenancy or other agreement pursuant to which a person occupies a dwelling is not on a commercial basis regard shall be had inter alia to whether the terms upon which the person occupies the dwelling include terms which are not enforceable at law.

(3) Sub-paragraphs (e) and (g) of paragraph (1) shall not apply in a case where the person satisfies the appropriate authority that the liability was not intended to be a means of taking advantage of the housing benefit scheme.

(4) In this regulation “residential accommodation” means accommodation which is provided in—

- (a) a care home; or
- (b) an independent hospital.

### **Persons from abroad**

**10.**—(1) A person from abroad who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 10A (entitlement of a refugee to housing benefit) and Schedule A1(**61**) (treatment of claims for housing benefit by refugees) apply.

(2) In paragraph (1) “person from abroad” also means any person other than a person to whom paragraph (3) applies who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, but for this purpose no person shall be treated as not habitually resident in the United Kingdom who is—

- (a) a worker for the purposes of Council Regulation (EEC) No 1612/68 or (EEC) No 1251/70 or a person with a right to reside in the United Kingdom pursuant to Council Directive No 68/360/EEC or No 73/148/EEC or a person who is an accession State worker requiring registration who is treated as a worker for the purpose of the definition of “qualified person” in regulation 5(1) of the Immigration (European Economic Area) Regulations 2000(**62**) pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(**63**); or
- (b) a refugee; or
- (c) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971(**64**), or to remain in the United Kingdom by the Secretary of State; or
- (d) 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(**65**) 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.

(3) This paragraph applies to a person who—

- (a) is on state pension credit; or
- (b) is in Great Britain and who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.

(4) In this regulation, for the purposes of the definition of a person from abroad no person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland if he does not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(5) Paragraph (1) of Part 1 of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000(**66**) shall not apply to a person who has been temporarily without funds for any period, or the aggregate of any periods, exceeding 42 days during any one period of limited leave (including any such period as extended).

(61) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 2 for regulation 10A and Schedule A1 (claims by refugees).

(62) S.I. 2000/2326, to which there are amendments not relevant to these Regulations.

(63) S.I. 2004/1219.

(64) 1971 c. 77.

(65) 1999 c. 33.

(66) S.I. 2000/636.

(6) In this regulation—

“a European Economic Area State” means a Member State or Norway, Sweden, Iceland, Austria or Finland;

“refugee” in this regulation means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees<sup>(67)</sup>.

## PART 3

### Payments in respect of a dwelling

#### Eligible housing costs

**11.**—(1) Subject to the following provisions of this regulation, housing benefit shall be payable in respect of the payments specified in regulation 12(1) (rent) and a claimant’s maximum housing benefit shall be calculated under Part 7 (amount of benefit) by reference to the amount of his eligible rent determined in accordance with regulations 12(3) and (7) and 13 (rent and maximum rent).

(2) Where any payment for which a person is liable in respect of a dwelling and which is specified in regulation 12(1) (payments of rent for which housing benefit is payable), is increased on account of—

- (a) outstanding arrears of any payment or charge; or
- (b) any other unpaid payment or charge,

to which paragraphs (1) to (3) of that regulation or Schedule 1 (ineligible service charges) refer and which is or was formerly owed by him in respect of that or another dwelling, a rent rebate or, as the case may be, a rent allowance shall not be payable in respect of that increase.

#### Rent

**12.**—(1) Subject to the following provisions of this regulation, the payments in respect of which housing benefit is payable in the form of a rent rebate or allowance are the following periodical payments which a person is liable to make in respect of the dwelling which he occupies as his home—

- (a) payments of, or by way of, rent;
- (b) payments in respect of a licence or permission to occupy the dwelling;
- (c) payments by way of mesne profits or, in Scotland, violent profits;
- (d) payments in respect of, or in consequence of, use and occupation of the dwelling;
- (e) payments of, or by way of, service charges payment of which is a condition on which the right to occupy the dwelling depends;
- (f) mooring charges payable for a houseboat;
- (g) where the home is a caravan or a mobile home, payments in respect of the site on which it stands;
- (h) any contribution payable by a person resident in an almshouse provided by a housing association which is either a charity of which particulars are entered in the register of charities established under section 3 of the Charities Act 1993<sup>(68)</sup> (register of charities) or an exempt charity within the meaning of that Act, which is a contribution towards the cost of maintaining that association’s almshouses and essential services in them;

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<sup>(67)</sup> Cmd. 9171.

<sup>(68)</sup> 1993 c. 10.

- (i) payments under a rental purchase agreement, that is to say an agreement for the purchase of a dwelling which is a building or part of one under which the whole or part of the purchase price is to be paid in more than one instalment and the completion of the purchase is deferred until the whole or a specified part of the purchase price has been paid; and
  - (j) where, in Scotland, the dwelling is situated on or pertains to a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993<sup>(69)</sup>, the payment in respect of the croft land.
- (2) A rent rebate or, as the case may be, a rent allowance shall not be payable in respect of the following periodical payments—
- (a) payments under a long tenancy except a shared ownership tenancy granted by a housing association or a housing authority;
  - (b) payments under a co-ownership scheme;
  - (c) payments by an owner;
  - (d) payments under a hire purchase, credit sale or conditional sale agreement except to the extent the conditional sale agreement is in respect of land; and
  - (e) payments by a Crown tenant.
- (3) Subject to paragraphs (4), (5) and (7), the amount of a person's eligible rent shall be—
- (a) the maximum rent where a maximum rent has been, or falls to be, determined in accordance with regulation 13 (maximum rent); or
  - (b) except where sub-paragraph (a) applies, the aggregate of such payments specified in paragraph (1) as that person is liable to pay less—
    - (i) except where he is separately liable for charges for water, sewerage or allied environmental services, an amount determined in accordance with paragraph (6);
    - (ii) where payments include service charges which are wholly or partly ineligible, an amount in respect of the ineligible charges determined in accordance with Schedule 1; and
    - (iii) where he is liable to make payments in respect of any service charges to which paragraph (1)(e) does not apply, but to which paragraph 3(2) of Part 1 of Schedule 1 (unreasonably low service charges) applies in the particular circumstances, an amount in respect of such charges determined in accordance with paragraph 3(2) of Part 1 of Schedule 1.
- (4) Where the payments specified in paragraph (1) are payable in respect of accommodation which consists partly of residential accommodation and partly of other accommodation, only such proportion thereof as is referable to the residential accommodation shall count as eligible rent for the purposes of these Regulations.
- (5) Where more than one person is liable to make payments in respect of a dwelling, the payments specified in paragraph (1) shall be apportioned for the purpose of calculating the eligible rent for each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each such person.
- (6) The amount of the deduction referred to in paragraph (3) shall be—
- (a) except in a case to which sub-paragraph (c) applies, if the dwelling occupied by the claimant is a self-contained unit, the amount of the charges;
  - (b) in any other case except one to which sub-paragraph (c) applies, the proportion of those charges in respect of the self-contained unit which is obtained by dividing the area of the

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(69) 1993 c. 44.



dwelling occupied by the claimant by the area of the self-contained unit of which it forms part;

- (c) where the charges vary in accordance with the amount of water actually used, the amount which the appropriate authority considers to be fairly attributable to water, and sewerage services, having regard to the actual or estimated consumption of the claimant.

(7) In any case where it appears to the authority that in the particular circumstances of that case the eligible rent as determined in accordance with the preceding paragraphs of this regulation is greater than it is reasonable to meet by way of housing benefit, the eligible rent shall be such lesser sum as seems to that authority to be an appropriate rent in that particular case.

- (8) In this regulation and Schedule 1 (ineligible service charges)—

“service charges” means periodical payments for services, whether or not under the same agreement as that under which the dwelling is occupied, or whether or not such a charge is specified as separate from or separately identified within other payments made by the occupier in respect of the dwelling; and

“services” means services performed or facilities (including the use of furniture) provided for, or rights made available to, the occupier of a dwelling.

## **Maximum rent**

**13.**—(1) Where an authority has applied to the rent officer for a determination in accordance with regulation 14 (requirement to refer to rent officers) and a rent officer has made a determination or redetermination in exercise of the Housing Act functions, the maximum rent shall be determined in accordance with paragraphs (2) to (17).

(2) In a case where the rent officer has determined a claim-related rent, but is not required to notify the authority of a local reference rent or a single room rent, the maximum rent shall be that claim-related rent.

(3) In a case where the rent officer has determined and is required to notify the authority of a local reference rent, the maximum rent shall not exceed twice that local reference rent.

- (4) Subject to paragraph (5), in the case of a young individual—

- (a) except where sub-paragraph (b) applies, where the rent officer has determined a single room rent and is required to notify the authority of it, the maximum rent shall not exceed that single room rent;

- (b) where—

- (i) the rent officer has determined a single room rent and a claim-related rent and is required to notify the authority of them;
- (ii) the claim-related rent includes payment in respect of meals; and
- (iii) the single room rent is greater than the claim-related rent less an amount in respect of meals determined in accordance with paragraph 2 of Part 1 of Schedule 1 (ineligible service charges),

the maximum rent shall not exceed the claim-related rent less that amount in respect of meals.

- (5) Paragraph (4) shall not apply in the case of a claimant—

- (a) to whom paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (saving provision) applies;
- (b) to whom paragraph 6 of Schedule 3 (severe disability premium) applies; or
- (c) who has a non-dependant residing with him.

(6) Subject to the limits specified in paragraphs (3) and (4), in a case where the rent officer has determined both a local reference rent of which he is required to notify the authority and a claim-related rent, and—

- (a) the claim-related rent is higher than the local reference rent, the maximum rent shall be the local reference rent;
- (b) the local reference rent is higher than the claim-related rent, the maximum rent shall be the claim-related rent.

(7) Subject to the limits specified in paragraphs (3) and (4), in a case where the rent officer has determined a local reference rent of which he is required to notify the authority, but has not determined a claim-related rent and the reckonable rent is more than the local reference rent, the maximum rent shall be the local reference rent.

(8) In a case where—

- (a) the authority has determined a maximum rent in respect of a dwelling; and
- (b) during the award of housing benefit the reckonable rent in respect of that dwelling is reduced to a sum which is less than the reckonable rent at the time that maximum rent was determined,

then—

- (i) the maximum rent shall not be reduced, where the sum is not less than the maximum rent, during a period ending on the effective date of a decision adopting a determination of a rent officer where that determination was made in exercise of the Housing Act functions pursuant to an application by the authority under regulation 14(1)(c), (d), (e), (f) or (g); and
- (ii) the maximum rent shall be reduced to an amount equal to that sum, where that sum is less than the maximum rent during a period ending on the effective date of a decision adopting a determination of a rent officer where that determination was made in exercise of the Housing Act functions pursuant to an application by the authority under regulation 14(1)(c), (d), (e), (f) or (g).

(9) Subject to paragraph (10), in a case where—

- (a) a rent officer has made a determination in exercise of the Housing Act functions pursuant to an application by an authority under regulation 14(1)(e); and
- (b) subsequent to that determination the reckonable rent for that dwelling is changed,

then in determining a maximum rent in relation to a claim for benefit of a claimant who has a liability to make payments in respect of that dwelling, the authority shall treat the claim-related or, as the case may be, reckonable rent to be that determined in or, as the case may be, applicable to, that determination by the rent officer.

(10) Paragraph (9) shall not apply in a case where the reckonable rent is reduced to a figure below the figure that would have been the maximum rent if that reckonable rent had not changed; and where this paragraph applies, the maximum rent shall be the reckonable rent, as so reduced.

(11) In a case where the claimant occupies a dwelling which is the same as that occupied by him at the date of death of any person to whom paragraph (16)(b) to (d) applied or, had a claim been made, would have applied, the maximum rent shall be either—

- (a) the maximum rent which applied before the death occurred; or
- (b) in a case where there was no maximum rent, the reckonable rent due before the death occurred,

for a period of 12 months from the date of such a death.

(12) For the purposes of paragraph (11), a claimant shall be treated as occupying the dwelling if paragraph (13) of regulation 7 (circumstances in which a person is or is not to be treated as occupying

a dwelling as his home) is satisfied and for that purpose sub-paragraph (b) of that paragraph of that regulation shall be treated as if it were omitted.

(13) In a case where a charge for meals is ineligible to be met by housing benefit under regulation 12(3) and paragraph 1 of Schedule 1, there shall be deducted an amount determined in accordance with paragraph 2 of Schedule 1 in respect of meals in the calculation of a person's maximum rent, except where the maximum rent is derived from a rent officer determination under—

- (a) paragraph 3 (exceptional high rents) of Schedule 1 to the Rent Officers Order(70) and the notice of claim-related rent states pursuant to paragraph 9(1)(c) of that Schedule that an ineligible payment has not been included in it; or
- (b) paragraph 5 (single room rents) of that Schedule.

(14) Subject to paragraph (15), where the relevant authority is satisfied that a person to whom paragraph (16) applies was able to meet the financial commitments for his dwelling when they were entered into, there shall be no maximum rent during the first 13 weeks of the claimant's award of housing benefit.

(15) Paragraph (14) shall not apply where a claimant was previously entitled to benefit in respect of a award of housing benefit which fell wholly or partly less than 52 weeks before the commencement of his current award of housing benefit.

(16) This paragraph applies to the following persons—

- (a) the claimant;
- (b) any member of his family;
- (c) if the claimant is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household;
- (d) subject to paragraph (17), any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him.

(17) Paragraph (16)(d) shall only apply to a relative who has no separate right of occupation of the dwelling which would enable him to continue to occupy it even if the claimant ceased his occupation of it.

(18) In this regulation—

“claim-related rent” means the rent notified by the rent officer under paragraph 9(1) of Schedule 1 to the Rent Officers Order;

“deduction for meals” means any amount of a person's otherwise eligible rent which is an ineligible service charge by reason of and within the meaning of paragraph 1(a)(i) of Schedule 1;

“local reference rent” means the rent determined by a rent officer under paragraph 4 of Schedule 1 to the Rent Officers Order;

“reckonable rent” means those payments, which a person is liable to make in respect of the dwelling which he occupies as his home, and which are eligible, or would, but for this regulation, be eligible for housing benefit plus the amount of any deduction for fuel, deduction for meals or water charges, as the case may be, which that person is liable to pay;

“single room rent” means the rent determined by a rent officer under paragraph 5 of Schedule 1 to the Rent Officers Order.

**Requirement to refer to rent officers**

**14.—(1)** Subject to the following provisions of this regulation, a relevant authority shall apply to a rent officer for a determination to be made in pursuance of the Housing Act functions where—

- (a) it has received a claim on which rent allowance may be awarded; or
- (b) it has received relevant information regarding a claim on which rent allowance may be awarded; or
- (c) it has received a notification of a change relating to a rent allowance; or
- (d) it has received a notification of a change of dwelling; or
- (e) it has received, except in the case where any liability to make payments in respect of a dwelling would be to a housing authority, a request from a person (“the prospective occupier”), on a properly completed form approved for the purpose by the relevant authority, signifying that he is contemplating occupying a dwelling as his home and that if he does so, he is likely to claim housing benefit, but only where that form—
  - (i) is signed by the prospective occupier;
  - (ii) is countersigned by the person to whom the prospective occupier would incur liability to make such payments; and
  - (iii) indicates that the person countersigning agrees to the application being made for that determination; or
- (f) 52 weeks have elapsed since it last made an application under sub-paragraph (a), (b), (c), (d) or (e) above in relation to the claim or award in question; or
- (g) 52 weeks have elapsed since—
  - (i) an application was made under sub-paragraph (f) above; or
  - (ii) an application was made under this sub-paragraph,
 whichever last occurred.

(2) When applying to the rent officer pursuant to paragraph (1) the relevant authority shall state the total amount of those payments referred to in regulation 12(1) (rent) which that claimant is liable to make in respect of the dwelling which he occupies as his home and shall provide the following information in respect of those payments—

- (a) whether they include any charges for water, sewerage or allied environmental services or charges in respect of meals or fuel which are ineligible by virtue of paragraph 2 and Part 2 of Schedule 1 (ineligible service charges); and
- (b) where they include any charges that are ineligible for housing benefit by reason of paragraph 1(a)(iv) and (c) to (f) of Schedule 1 (ineligible service charges)—
  - (i) that such charges are included; and
  - (ii) the value of those charges as determined by that authority pursuant to regulation 13(3) and that Schedule.

(3) When applying to the rent officer pursuant to paragraph (1), the relevant authority shall state whether, in their opinion, the claimant is or may be a young individual.

(4) An application shall not be required under paragraph (1) where a claim, relevant information regarding a claim, notification or request relates to either—

- (a) a dwelling in a hostel if, during the period of 12 months which ends on the day on which that claim, relevant information regarding a claim, notification or request is received by the relevant authority—

- (i) a rent officer has already made a determination in the exercise of the Housing Act functions in respect of a dwelling in that hostel which is a similar dwelling to the dwelling to which the claim, relevant information, notification or request relates; and
    - (ii) there has been no change relating to a rent allowance that has affected the dwelling in respect of which that determination was made; or
  - (b) an “excluded tenancy” within the meaning of Schedule 2 (excluded tenancies).
- (5) Where a relevant authority receives a request pursuant to paragraph (1)(e) and it is a case where, by reason of paragraph (4), an application to a rent officer is not required, the authority shall—
- (a) return it to the prospective occupier, indicating why no such application is required; and
  - (b) where it is not required by reason of either paragraph (4)(a) of this regulation or paragraph 2 of Schedule 2 (cases where the rent officer has already made a determination), shall also send him a copy of that determination within 4 days of the receipt of that request by the authority.
- (6) Where an application to a rent officer is required by paragraph (1) it shall be made within 3 days, or as soon as practicable thereafter, of—
- (a) the relevant authority receiving a claim on which rent allowance may be awarded; or
  - (b) the relevant authority receiving relevant information regarding a claim on which rent allowance may be awarded; or
  - (c) the relevant authority receiving a notification of a change relating to a rent allowance; or
  - (d) the relevant authority receiving a notification of a change of dwelling; or
  - (e) the day on which the period mentioned in paragraph (1)(f) or (g) elapsed,
- except that, in the case of a request to which paragraph (1)(e) applies, the application shall be made within 2 days of the receipt of that request by the authority.
- (7) For the purpose of calculating any period of days mentioned in paragraphs (5) or (6), no regard shall be had to a day on which the offices of the relevant authority are closed for the purposes of receiving or determining claims.
- (8) Where the relevant authority has identified charges to which paragraph (2)(b) applies, it shall—
- (a) deduct those charges from the total amount of those payments which, in accordance with paragraph (2), it has stated that the claimant is liable to make in respect of the dwelling which he occupies as his home; and
  - (b) notify that total so reduced to the rent officer in its application under paragraph (1) for his use in making determinations under Schedule 1 (determinations) to the Rent Officers Order.
- (9) For the purposes of this regulation a dwelling in a hostel shall be regarded as similar to another dwelling in that hostel if each provides sleeping accommodation for the same number of persons.
- (10) In this regulation—
- “change of dwelling” means a change of dwelling occupied by a claimant as his home during the award where the dwelling to which the claimant has moved is one in respect of which the authority may make a rent allowance;
  - “change relating to a rent allowance” means a change or increase to which paragraph 2(3)(a), (b), (c) or (d) of Schedule 2 applies;
  - “prospective occupier” shall include a person currently in receipt of housing benefit in respect of a dwelling which he occupies as his home and who is contemplating entering into a new

agreement to occupy that dwelling, but not in a case where his current agreement commenced less than 11 months before such a request;

“registered housing association” means a housing association which—

- (a) is registered in a register maintained by the Corporation or the National Assembly for Wales under chapter 1 of Part 1 of the Housing Act 1996<sup>(71)</sup>; or
- (b) in Scotland, is registered by Scottish Ministers by virtue of section 57(3)(b) of the Housing (Scotland) Act 2001<sup>(72)</sup>;

“relevant information” means information or evidence forwarded to the relevant authority by an appropriate DWP office regarding a claim on which rent allowance may be awarded, which completes the transfer of all information or evidence held by the appropriate DWP office relating to that claim;

“tenancy” includes—

- (i) in Scotland, any other right of occupancy; and
- (ii) in any other case, a licence to occupy premises,

and reference to a tenant, landlord or any other expression appropriate to a tenancy shall be construed accordingly;

“the Corporation” has the same meaning as in section 56 of the Housing Act 1996.

### **Applications to the rent officer for redeterminations**

**15.—**(1) Subject to paragraph (2) and regulation 17 (substitute determinations or substitute redeterminations), where a relevant authority has obtained from a rent officer either or both of the following—

- (a) a determination on a reference made under regulation 14 (requirement to refer to rent officers);
- (b) a redetermination on a reference made under regulation 16(2) (application for redetermination by rent officer),

the authority may apply to the rent officer for a redetermination of any determination or redetermination he has made which has effect at the date of the application.

(2) No application shall be made for a further redetermination of a redetermination made in response to an application under paragraph (1).

### **Application for redetermination by rent officer**

**16.—**(1) This paragraph applies where—

- (a) a person affected makes written representations which are signed by him, to a relevant authority concerning a decision which it makes in relation to him;
- (b) those representations relate, in whole or in part, to a rent officer’s determination or redetermination in exercise of the Housing Act functions; and
- (c) those representations are made no later than 6 weeks after the day on which the person affected was notified of the decision by the relevant authority.

(2) Subject to paragraphs (3) and (4), where paragraph (1) applies, the relevant authority shall, within 7 days of receiving the representations, apply to the rent officer for a redetermination or, as the case may be, a further redetermination in exercise of the Housing Act functions and a copy of those representations shall accompany the local authority’s application.

<sup>(71)</sup> 1996 c. 5; functions transferred by Government of Wales Act 1998 (c. 38), section 140.

<sup>(72)</sup> 2001 asp 10.

(3) Except where paragraph (4) applies, a relevant authority, in relation to any determination by a rent officer of an application under regulation 14(1) (requirement to refer to rent officers), shall not apply for a redetermination under paragraph (2) more than once in respect of an individual claimant's dwelling to which that determination relates.

(4) Paragraph (2) shall operate so as to require a relevant authority to make a second application where the following conditions are met in addition to those imposed by that paragraph—

- (a) the written representations made under paragraph (1) related to a determination by a rent officer made in response to an application by the relevant authority under regulation 15 (application to the rent officer for redetermination);
- (b) by the time of that application, the rent officer has already provided a redetermination under this regulation of a determination made in response to an application under regulation 14(1); and
- (c) both the application under this regulation referred to in sub-paragraph (b) and the second application for which this paragraph provides relate to the same claimant.

(5) Where a decision has been revised in consequence of a redetermination, substitute determination or substitute redetermination by a rent officer in exercise of the Housing Act functions and that redetermination, substitute determination or substitute redetermination has led to—

- (a) a reduction in the maximum rent, the redetermination, substitute determination or substitute redetermination shall be a change of circumstances;
- (b) an increase in the maximum rent, the redetermination, substitute determination or substitute redetermination shall have effect in place of the original determination.

### **Substitute determinations or substitute redeterminations**

**17.—**(1) In a case where either—

- (a) the appropriate authority discovers that an application it has made to the rent officer contained an error in respect of any of the following—
  - (i) the size of the dwelling;
  - (ii) the number of occupiers;
  - (iii) the composition of the household;
  - (iv) the terms of the tenancy; or
- (b) the rent officer has, in accordance with article 7A of the Rent Officers Order, notified an appropriate authority of an error he has made (other than in the application of his professional judgement),

the authority shall apply to the rent officer for a substitute determination or substitute redetermination as the case may be.

(2) In its application to the rent officer the relevant authority shall state the nature of the error and withdraw any previous application relating to the same case for a redetermination or substitute determination or substitute redetermination, which it has made but to which the rent officer has not yet responded.

### **Application of provisions to substitute determinations or substitute redeterminations**

**18.** Regulations 15, 16 and 17 apply to a substitute determination or substitute redetermination as they apply to the determination or redetermination it replaces.



## PART 4

### Membership of a family

#### Persons of prescribed description

**19.**—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 137(1) of the Act as it applies to housing benefit (definition of family) is a person aged 16 or over but under 19 who is treated as a child for the purposes of section 142 of the Act (meaning of child), and in these Regulations such a person is referred to as a “young person”.

(2) Paragraph (1) shall not apply to a person who is—

- (a) on income support or an income-based jobseeker’s allowance;
- (b) receiving advanced education within the meaning of regulation 12(2) of the Income Support Regulations<sup>(73)</sup> (relevant education); or
- (c) a person to whom section 6 of the Children (Leaving Care) Act 2000<sup>(74)</sup> (exclusion from benefits) applies.

(3) A person of a prescribed description for the purposes of section 137(1) of the Act as it applies to housing benefit (definition of the family) includes a child or young person in respect of whom section 145A of that Act<sup>(75)</sup> applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of that Act.

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

**20.**—(1) Subject to the following provisions of this regulation a person shall be treated as responsible for a child or young person who is normally living with him and this includes a child or young person to whom paragraph (3) of regulation 19 applies.

(2) Where a child or young person spends equal amounts of time in different households, or where there is a question as to which household he is living in, the child or young person shall be treated for the purposes of paragraph (1) as normally living with—

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

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

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

**21.**—(1) Subject to paragraphs (2) to (4), the claimant and any partner and, where the claimant or his partner is treated as responsible by virtue of regulation 20 (circumstances in which a person is to be treated as responsible or not responsible for another) for a child or young person, that child or young person and any child of that child or young person, shall be treated as members of the same

<sup>(73)</sup> S.I. 1987/1961.

<sup>(74)</sup> 2000 c. 35.

<sup>(75)</sup> Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c. 21).

household notwithstanding that any of them is temporarily living away from the other members of his family.

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

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

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

- (a) placed with the claimant or his partner by a local authority under section 23(2)(a) of the Children Act 1989<sup>(76)</sup> or by a voluntary organisation under section 59(1)(a) of that Act, or in Scotland boarded out with the claimant or his partner under a relevant enactment; or
- (b) placed, or in Scotland boarded out, with the claimant or his partner prior to adoption; or
- (c) placed for adoption with the claimant or his partner in accordance with the Adoption and Children Act 2002<sup>(77)</sup> or the Adoption Agencies (Scotland) Regulations 1996<sup>(78)</sup>.

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

- (a) is being looked after by, or in Scotland is in the care of, a local authority under a relevant enactment; or
- (b) has been placed, or in Scotland boarded out, with a person other than the claimant prior to adoption; or
- (c) has been placed for adoption in accordance with the Adoption and Children Act 2002 or the Adoption Agencies (Scotland) Regulations 1996.

(5) An authority shall treat a child or young person to whom paragraph (4)(a) applies as being a member of the claimants' household in any benefit week where—

- (a) that child or young person lives with the claimant for part or all of that benefit week; and
- (b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.

(6) In this regulation "relevant enactment" means the Army Act 1955<sup>(79)</sup>, the Air Force Act 1955<sup>(80)</sup>, the Naval Discipline Act 1957<sup>(81)</sup>, the Matrimonial Proceedings Children Act 1958<sup>(82)</sup>, the Social Work (Scotland) Act 1968<sup>(83)</sup>, the Family Law Reform Act 1969<sup>(84)</sup>, the Children and Young Persons Act 1969<sup>(85)</sup>, the Matrimonial Causes Act 1973<sup>(86)</sup>, the Children Act 1975<sup>(87)</sup>, the Domestic Proceedings and Magistrates' Courts Act 1978<sup>(88)</sup>, the Adoption (Scotland)

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<sup>(76)</sup> 1989 c. 41.

<sup>(77)</sup> 2002 c. 38.

<sup>(78)</sup> S.I. 1996/3266.

<sup>(79)</sup> 1955 c. 18.

<sup>(80)</sup> 1955 c. 19.

<sup>(81)</sup> 1957 c. 53.

<sup>(82)</sup> 1958 c. 40.

<sup>(83)</sup> 1968 c. 49.

<sup>(84)</sup> 1969 c. 46.

<sup>(85)</sup> 1969 c. 54.

<sup>(86)</sup> 1973 c. 18.

<sup>(87)</sup> 1975 c. 72.

<sup>(88)</sup> 1978 c. 22.

Act 1978<sup>(89)</sup>, the Child Care Act 1980<sup>(90)</sup>, the Family Law Act 1986<sup>(91)</sup>, the Children Act 1989<sup>(92)</sup> and the Children (Scotland) Act 1995<sup>(93)</sup>.

## PART 5

### Applicable amounts

#### Applicable amounts

**22.**—(1) Subject to regulations 61 and 62 and Schedule A1<sup>(94)</sup> (calculation of weekly amounts, rent free periods and treatment of claims for housing benefit by refugees), the applicable amount of a claimant shall be the aggregate of such of the following amounts as apply in his case—

- (a) an amount in respect of his personal allowance, determined in accordance with paragraph 1 of Schedule 3;
- (b) an amount in respect of any child or young person who is a member of his family, determined in accordance with paragraph 2 of that Schedule;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with paragraph 3(1) of Part 2 of that Schedule (family premium);
- (d) if he is a member of a family of which one member is a child under the age of one year, an additional amount determined in accordance with paragraph 3(2) of Part 2 of that Schedule;
- (e) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of that Schedule (premiums).

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

- (a) a claimant who; or
- (b) a claimant who has a partner one or both of whom; or
- (c) a claimant who is a member of a polygamous marriage one or more of whose members,

is or are a patient, and has or have been a patient for a period exceeding 52 weeks or, in exceptional circumstances, is unlikely to substantially exceed 52 weeks (“long-term patient”).

(3) In the case of a claimant to whom this paragraph applies and who—

- (a) has no partner and is not a lone parent, the applicable amount shall be equal to 20 per cent. of the weekly rate of the basic pension for the time being specified in section 44(4) of the Act (“the standard reduction”);
- (b) is a lone parent, the applicable amount shall be an amount equal to the standard deduction, increased by such of the amounts specified in sub-paragraphs (b) to (e) of paragraph (1) as apply in his case;
- (c) has a partner and either the claimant or his partner is a long-term patient, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to the standard reduction;

<sup>(89)</sup> 1978 c. 28.

<sup>(90)</sup> 1980 c. 5.

<sup>(91)</sup> 1986 c. 55.

<sup>(92)</sup> 1989 c. 41.

<sup>(93)</sup> 1995 c. 36.

<sup>(94)</sup> See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 2 for regulation 10A and Schedule A1 (claims by refugees).

- (d) has a partner and both the claimant and his partner are long-term patients, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to twice the sum of the standard reduction;
  - (e) is a member of a polygamous marriage and one or more members of the marriage are long term patients, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to the standard reduction multiplied by the number of members who are long-term patients.
- (4) Any calculation made for the purposes of paragraphs (2) and (3) shall be rounded to the nearest 5 pence, 2.5 pence being rounded to the next 5 pence above.
- (5) In this regulation and Schedule 3 (applicable amounts), “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975<sup>(95)</sup>.
- (6) In Schedule 3, “additional spouse” means a spouse of either party to the marriage who is additional to the other party to the marriage.
- (7) For the purposes of calculating the period of 52 weeks referred to in paragraph (2), where a person has been maintained free of charge while undergoing medical or other treatment as an in-patient in a hospital or similar institution within the meaning of that paragraph for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been so maintained for a period equal in duration to the total of those distinct periods.

## PART 6

### Assessment of income and capital

#### SECTION 1

##### *General*

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

**23.**—(1) The income and capital of a claimant’s partner which by virtue of section 136(1) of the Act is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the “claimant” shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to his partner.

(2) Where a claimant or the partner of a claimant is married polygamously to two or more members of his household—

- (a) the claimant shall be treated as possessing capital and income belonging to each such member; and
- (b) the income and capital of that member shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant.

(3) The income and capital of a child or young person shall not be treated as the income and capital of the claimant.

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<sup>(95)</sup> [S.I. 1975/555](#); the relevant amending instruments are [S.I. 1987/1683](#), [1992/2595](#) and [1999/1326](#).

**Circumstances in which income of non-dependant is to be treated as claimant's**

24.—(1) Where it appears to the relevant authority that a non-dependant and the claimant have entered into arrangements in order to take advantage of the housing benefit scheme and the non-dependant has more capital and income than the claimant, that authority shall, except where the claimant is on income support or an income-based jobseeker's allowance, treat the claimant as possessing capital and income belonging to that non-dependant and, in such a case, shall disregard any capital and income which the claimant does possess.

(2) Where a claimant is treated as possessing capital and income belonging to a non-dependant under paragraph (1) the capital and income of that non-dependant shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant and any reference to the "claimant" shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to that non-dependant.

**SECTION 2***Income***Calculation of income and capital**

25. 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.

**Claimant in receipt of guarantee credit**

26. In the case of a claimant who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of his capital and income shall be disregarded.

**Calculation of claimant's income and capital in savings credit only cases**

27.—(1) In determining the income and capital of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, the relevant authority shall, subject to the following provisions of this regulation, use the calculation or estimate of the claimant's or, as the case may be, the claimant's partner's income and capital made by the Secretary of State for the purpose of determining that award.

(2) The Secretary of State shall provide the relevant authority with details of the calculation or estimate—

- (a) if the claimant is on housing benefit or has claimed housing benefit, within the two working days following the day the calculation or estimate was determined, or as soon as reasonably practicable thereafter; or
- (b) if sub-paragraph (a) does not apply, within the two working days following the day he receives information from the relevant authority that the claimant or his partner has claimed housing benefit, or as soon as reasonably practicable thereafter.

(3) The details provided by the Secretary of State shall include the amount taken into account in that determination in respect of the net income of the person claiming state pension credit.

(4) The relevant authority shall modify the amount of the net income provided by the Secretary of State only in so far as necessary to take into account—

- (a) the amount of the savings credit payable;
  - (b) in respect of any dependent children of the claimant, childcare charges taken into account under regulation 30(1)(c) (calculation of income on a weekly basis);
  - (c) the higher amount disregarded under these Regulations in respect of—
    - (i) lone parent's earnings;
    - (ii) payments of maintenance, whether under a court order or not, which is made or due to be made by—
      - (aa) the claimant's former partner, or the claimant's partner's former partner; or
      - (bb) the parent of a child or young person where that child or young person is a member of the claimant's family except where that parent is the claimant or the claimant's partner;
  - (d) any amount to be disregarded by virtue of paragraph 9(1) of Schedule 4;
  - (e) the income and capital of any partner of the claimant who is treated as a member of the claimant's household under regulation 21 (circumstances in which a person is to be treated as being or not being a member of the household) to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
  - (f) regulation 24 (circumstances in which income of a non-dependent is to be treated as claimant's), if the relevant authority determines that this provision applies in the claimant's case;
  - (g) any modification under section 134(8) of the Administration Act (modifications by resolution of an authority) which is applicable in the claimant's case.
- (5) Regulations 29 to 49 shall not apply to the amount of the net income to be taken into account by the local authority under paragraph (1), but shall apply (so far as relevant) for the purpose of determining any modifications which fall to be made to that amount under paragraph (4).
- (6) The relevant authority shall for the purpose of determining the claimant's entitlement of housing benefit use, except where paragraphs (7) and (8) apply, the calculation of the claimant's capital made by the Secretary of State, and shall in particular apply the provisions of regulation 43 if the claimant's capital is calculated as being in excess of £16,000.
- (7) If paragraph (8) applies, the relevant authority shall calculate the claimant's capital in accordance with regulations 43 to 49 below.
- (8) This paragraph applies if—
- (a) the Secretary of State notifies the relevant authority that the claimant's capital has been determined as being £16,000 or less;
  - (b) subsequent to that determination the claimant's capital rises to more than £16,000; and
  - (c) the increase occurs whilst there is in force an assessed income period within the meaning of sections 6 and 9 of the State Pension Credit Act.

### **Calculation of income and capital where state pension credit is not payable**

**28.** The income and capital of a person to whom neither regulation 26 nor regulation 27 applies shall be calculated or estimated by the relevant authority in accordance with regulations 29 to 49.

### **Meaning of “income”**

**29.—**(1) For the purposes of these Regulations, “income” means income of any of the following descriptions—

- (a) earnings;

- (b) working tax credit<sup>(96)</sup>;
- (c) retirement pension income within the meaning of the State Pension Credit Act<sup>(97)</sup>;
- (d) income from annuity contracts (other than retirement pension income);
- (e) a war disablement pension or war widow's or widower's pension;
- (f) a foreign war disablement pension or war widow's or widower's pension;
- (g) a guaranteed income payment;
- (h) a payment made under article 21(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005<sup>(98)</sup> but only where the condition referred to in article 23(2)(c) is met;
- (i) income from capital, other than capital disregarded under Part 1 of Schedule 6;
- (j) social security benefits, other than retirement pension income or any of the following benefits—
  - (i) disability living allowance;
  - (ii) attendance allowance payable under section 64 of the Act;
  - (iii) an increase of disablement pension under section 104 or 105 of the Act;
  - (iv) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part 2 of Schedule 8 to the Act<sup>(99)</sup>;
  - (v) an increase of an allowance payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;
  - (vi) child benefit;
  - (vii) any guardian's allowance payable under section 77 of the Act;
  - (viii) any increase for a dependant, other than the claimant's partner, payable in accordance with Part 4 of the Act;
  - (ix) any social fund payment made under Part 8 of the Act;
  - (x) Christmas bonus payable under Part 10 of the Act;
  - (xi) housing benefit;
  - (xii) council tax benefit;
  - (xiii) bereavement payment<sup>(100)</sup>;
  - (xiv) statutory sick pay;
  - (xv) statutory maternity pay;
  - (xvi) statutory paternity pay payable under Part 12ZA of the Act<sup>(101)</sup>;
  - (xvii) statutory adoption pay payable under Part 12ZB of the Act<sup>(102)</sup>;
  - (xviii) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland;
- (k) all foreign social security benefits which are similar to the social security benefits prescribed above;

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<sup>(96)</sup> See definition inserted in regulation 2(1) by S.I. 2002/2402.

<sup>(97)</sup> See section 16(1) of the State Pension Credit Act 2002 (c. 16).

<sup>(98)</sup> S.I. 2005/489.

<sup>(99)</sup> See in particular paragraph 7(2)(b) of Schedule 8.

<sup>(100)</sup> Bereavement payment was introduced by section 54(1) of the Welfare Reform and Pensions Act 1999 (c. 30).

<sup>(101)</sup> Part 12ZA was inserted by section 2 of the Employment Act 2002 (c. 22).

<sup>(102)</sup> Part 12ZB was inserted by section 4 of the Employment Act 2002.



- (l) any payment made under article 37 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(103);
  - (m) 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;
  - (n) payments under a scheme made under the Pneumoconiosis etc. (Worker's Compensation) Act 1979(104);
  - (o) payments made towards the maintenance of the claimant by his spouse, civil partner, former spouse or former civil partner or towards the maintenance of the claimant's partner by his spouse, civil partner, former spouse or former civil partner, including payments made—
    - (i) under a court order;
    - (ii) under an agreement for maintenance; or
    - (iii) voluntarily;
  - (p) payments due from any person in respect of board and lodging accommodation provided by the claimant;
  - (q) payments consisting of royalties or other sums received as a consideration for the use of, or the right to use, any copyright, patent or trade mark;
  - (r) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982(105);
  - (s) 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;
  - (t) any sum payable by way of pension out of money provided under the Civil List Act 1837(106), the Civil List Act 1937(107), the Civil List Act 1952(108), the Civil List Act 1972(109) or the Civil List Act 1975(110);
  - (u) any income in lieu of that specified in sub-paragraphs (a) to (r);
  - (v) 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 the property; and
    - (iii) has an agreement with another person allowing that person to occupy that property on payment of rent; and
  - (w) any payment made at regular intervals under an equity release scheme.
- (2) For the purposes of these Regulations, a claimant's capital, other than capital disregarded under Schedule 6, shall be treated as if it were a weekly income—
- (a) in the case of a claimant residing permanently in accommodation to which paragraph (6) applies, of £1 for each £500 in excess of £10,000 and £1 for any excess which is not a complete £500;

(103) S.I. 1983/883.

(104) 1979 c. 41; amended by section 24 of the Social Security Act 1985 (c. 53).

(105) The Scheme is set out in the Appendix to S.I. 1982/719.

(106) 1837 c. 2.

(107) 1937 c. 32.

(108) 1952 c. 37.

(109) 1972 c. 7.

(110) 1975 c. 82.

- (b) in any other case, of £1 for each £500 in excess of £6,000 and £1 for any excess which is not a complete £500.
- (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<sup>(111)</sup>;
  - (b) the Social Security (Hospital In-Patients) Regulations 1975<sup>(112)</sup>;
  - (c) section 30DD or section 30E of the Act<sup>(113)</sup> (reductions in incapacity benefit in respect of pensions and councillor's allowances).
- (5) Where an award of any working tax credit or child tax credit under the Tax Credits Act 2002<sup>(114)</sup> is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit which arose in a previous tax year the amount to be taken into account under paragraph (1) shall be the amount of working tax credit or child tax credit awarded less the amount of that deduction.
- (6) This paragraph applies to accommodation provided—
  - (a) in a care home;
  - (b) in an Abbeyfield Home;
  - (c) under section 3 of, and Part 2 of the Schedule to, the Polish Resettlement Act 1947<sup>(115)</sup> (provision of accommodation) where the claimant requires personal care;
  - (d) in an independent hospital.
- (7) For the purposes of paragraph (6), a person shall be treated as residing permanently in the accommodation—
  - (a) except where sub-paragraph (b) applies, notwithstanding that he is absent from it for a period not exceeding 52 weeks;
  - (b) if it is accommodation to which paragraph (6)(c) applies—
    - (i) notwithstanding that he is absent from it for a period not exceeding 13 weeks; and
    - (ii) if he, with the agreement of the manager of the home, intends to return to it in due course.
- (8) In paragraph (1)(w), “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.

### Calculation of income on a weekly basis

**30.**—(1) Subject to regulation 34 (disregard of changes in tax, contributions etc.) and 61 and 62 (calculation of weekly amounts and rent free periods), for the purposes of section 130(1)(c) of the

<sup>(111)</sup> S.I. 1979/597.

<sup>(112)</sup> S.I. 1975/555.

<sup>(113)</sup> Sections 30DD was inserted by the Welfare Reform and Pensions Act 1999 (c. 30) and 30E were inserted by section 3(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

<sup>(114)</sup> 2002 c. 21.

<sup>(115)</sup> 1947 c. 19.

Act (conditions for entitlement to housing benefit) the income of a claimant who has reached the qualifying age for state pension credit shall be calculated on a weekly basis—

- (a) by calculating or estimating the amount which is likely to be his average weekly income in accordance with this Part;
  - (b) by adding to that amount the weekly income calculated under regulation 29(2);
  - (c) by then deducting any relevant child care charges to which regulation 31 (treatment of child care charges) applies from any earnings which form part of the average weekly income or, in a case where the conditions in paragraph (2) are met, from those earnings plus whichever credit specified in sub-paragraph (b) of that paragraph is appropriate, up to a maximum deduction in respect of the claimant's family of whichever of the sums specified in paragraph (3) applies in his case.
- (2) The conditions of this paragraph are that—
- (a) the claimant's earnings which form part of his average weekly income are less than the lower of either his relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in his case; and
  - (b) that claimant or, if he is a member of a couple either the claimant or his partner, is in receipt of working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) above refers shall be—
- (a) where the claimant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week;
  - (b) where the claimant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

### **Treatment of child care charges**

**31.**—(1) This regulation applies where a claimant is incurring relevant child care charges and—

- (a) is a lone parent and is engaged in remunerative work;
- (b) is a member of a couple both of whom are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other—
  - (i) is incapacitated;
  - (ii) is an in-patient in hospital; or
  - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

(2) For the purposes of paragraph (1) and subject to paragraph (4), a person to whom paragraph (3) applies shall be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he—

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Act<sup>(116)</sup>;

<sup>(116)</sup> Sections 30A to 30E were inserted by the Social Security (Incapacity for Work) Act 1994 (c. 18). Section 30A(1) was substituted by, and section 30A(2) was amended by, the Welfare Reform and Pensions Act 1999 (c. 30). Section 30B(3) was amended by the Pensions Act 1995 (c. 26) and the Tax Credits Act 2002 (c. 21). Section 30C(5) was amended by the Tax Credits Act 1999 (c. 10) and substituted by the Tax Credits Act 2002.

- (c) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support Regulations<sup>(117)</sup>; or
  - (d) is credited with earnings on the grounds of incapacity for work under regulation 8B of the Social Security (Credits) Regulations 1975<sup>(118)</sup>.
- (3) This paragraph applies to a person who was engaged in remunerative work immediately before—
- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit or income support on the grounds of incapacity for work; or
  - (b) the first day of the period in respect of which earnings are credited,
- as the case may be.
- (4) In a case to which paragraph (2)(c) or (d) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.
- (5) Relevant child care charges are those charges for care to which paragraphs (6) and (7) apply, and shall be estimated on a weekly basis in accordance with paragraph (10).
- (6) The charges are paid by the claimant for care which is provided—
- (a) in the case of any child of the claimant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday; or
  - (b) in the case of any child of the claimant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.
- (7) The charges are paid for care which is provided by one or more of the care providers listed in paragraph (8) and are not paid—
- (a) in respect of the child's compulsory education;
  - (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 20 (circumstances in which a person is treated as responsible or not responsible for another); or
  - (c) in respect of care provided by a relative of a child wholly or mainly in the child's home.
- (8) The care to which paragraph (7) refers may be provided—
- (a) out of school hours, by a school on school premises or by a local authority—
    - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
    - (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
  - (b) by a child care provider approved by an organisation accredited by the Secretary of State under the scheme established by the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>(119)</sup>;
  - (c) by persons registered under Part 10A of the Children Act 1989<sup>(120)</sup>;

<sup>(117)</sup> S.I. 1987/1967. Regulation 4ZA was inserted by S.I. 1996/206. Schedule 1B was inserted by S.I. 1996/1517. The relevant amending instruments are S.I. 1997/2197, S.I. 2000/636, S.I. 2000/1981, S.I. 2001/3070 and S.I. 2002/2689.

<sup>(118)</sup> S.I. 1975/556.

<sup>(119)</sup> S.I. 1999/3110.

<sup>(120)</sup> 1989 c. 41; Part XA (comprising sections 79A to 79X) was inserted by section 79 of the Care Standards Act 2000 (c. 14).

- (d) in schools or establishments which are exempted from registration under Part 10A of the Children Act 1989 by virtue of paragraph 1 or 2 of Schedule 9A to that Act<sup>(121)</sup>;
  - (e) by—
    - (i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001<sup>(122)</sup>; or
    - (ii) local authorities registered under section 33(1) of that Act,where the care provided is childminding or day care of children<sup>(123)</sup> within the meaning of that Act; or
  - (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act.
- (9) In paragraphs (6) and (8)(a), “the first Monday in September” means the Monday which first occurs in the month of September in any year.
- (10) Relevant child care charges shall be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.
- (11) For the purposes of paragraph (1)(c) the other member of a couple is to be treated as incapacitated where—
- (a) he is aged not less than 80;
  - (b) he is aged less than 80 and—
    - (i) the additional conditions specified in paragraph 13 of Schedule 3 to the Housing Benefit Regulations 2006 are treated as applying in his case; and
    - (ii) he satisfies those conditions or would satisfy them but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the Act<sup>(124)</sup>;
  - (c) the claimant is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;
  - (d) there is payable in respect of him one or more of the following—
    - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate specified in paragraph 2 of Part 1 of Schedule 4 to the Act<sup>(125)</sup>;
    - (ii) attendance allowance under section 64 of the Act;
    - (iii) severe disablement allowance under section 68 of the Act;
    - (iv) disability living allowance under section 71 of the Act;
    - (v) increase of disablement pension under section 104 of the Act;
    - (vi) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v) above;

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<sup>(121)</sup> Schedule 9A was inserted by section 79 of and Schedule 3 to the Care Standards Act 2000.

<sup>(122)</sup> 2001 asp 8.

<sup>(123)</sup> See section 2(20).

<sup>(124)</sup> Section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c. 18).

<sup>(125)</sup> Paragraph 2 was amended by the Social Security (Incapacity for Work) Act 1994.

- (e) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (d) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient within the meaning of regulation 22(5) (applicable amounts);
  - (f) sub-paragraph (c) or (d) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
  - (g) he has an invalid carriage or other vehicle provided to him by the Secretary of State under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977<sup>(126)</sup> or by Scottish Ministers under section 46 of the National Health Service (Scotland) Act 1978<sup>(127)</sup> or provided by the Department of Health and Social Services for Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(128)</sup>.
- (12) For the purposes of paragraph (11), once paragraph (11)(c) applies to the claimant, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.
- (13) For the purposes of paragraphs (6) and (8)(a), a person is disabled if he is a person—
- (a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;
  - (b) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948<sup>(129)</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994<sup>(130)</sup>; or
  - (c) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following that person's fifteenth birthday and ending on the day preceding the first Monday in September following that person's sixteenth birthday.
- (14) For the purposes of paragraph (1) a person on maternity leave, paternity leave or adoption leave shall be treated as if he is engaged in remunerative work for the period specified in paragraph (15) ("the relevant period") provided that—
- (a) in the week before the period of maternity leave, paternity leave or adoption leave began he was in remunerative work;
  - (b) the claimant is incurring relevant child care charges within the meaning of paragraph (5); and
  - (c) he is entitled to statutory maternity pay under section 164 of the Act, statutory paternity pay by virtue of section 171ZA or 171ZB of the Act<sup>(131)</sup>, statutory adoption pay by virtue of section 171ZL of the Act<sup>(132)</sup> or maternity allowance under section 35 of the Act.

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<sup>(126)</sup> 1977 c. 49.

<sup>(127)</sup> 1978 c. 29.

<sup>(128)</sup> S.I. 1972/1265(N.I.14).

<sup>(129)</sup> 1948 c. 29; section 29 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1(2); the Mental Health (Scotland) Act 1960 (c. 61), sections 113 and 114 and Schedule 4; the Social Work (Scotland) Act 1968 (c. 49), section 95(2) and Schedule 9, Part I; the Local Government Act 1972 (c. 70), sections 195(6), 272(1), Schedule 23 paragraph 2 and Schedule 30; the Employment and Training Act 1973 (c. 50), section 14(1) and Schedule 3 paragraph 3; the National Health Service Act 1977 (c. 49), section 129 and Schedule 15 paragraph 6; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 30 and Schedule 10 Part I; the Children Act 1989 (c. 41) section 108(5) and Schedule 13 paragraph 11(2) and the National Health Service and Community Care Act 1990 (c. 19), section 44(7).

<sup>(130)</sup> 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

<sup>(131)</sup> Sections 171ZA and 171ZB were inserted into the Social Security Contributions and Benefits Act 1992 by section 2 of the Employment Act 2002 (c. 22).

(15) The relevant period shall begin on the day on which the person's maternity leave, paternity leave or adoption leave commences and shall end on—

- (a) the date that leave ends;
- (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, statutory maternity pay, statutory paternity pay or statutory adoption pay ends, the date that entitlement ends; or
- (c) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance, statutory maternity pay, statutory paternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of working tax credit ends,

whichever shall occur first.

(16) In paragraph (15), “child care element” of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act(133) (child care element).

### **Calculation of average weekly income from tax credits**

**32.**—(1) This regulation applies where a claimant receives a tax credit.

(2) Where this regulation applies, the period over which a tax credit is to be taken into account shall be the period set out in paragraph (3).

(3) Where the instalment in respect of which payment of a tax credit is made is—

- (a) a daily instalment, the period is 1 day, being the day in respect of which the instalment is paid;
- (b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
- (c) a two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;
- (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this regulation “tax credit” means working tax credit.

### **Calculation of weekly income**

**33.**—(1) Except where paragraphs (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;

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(132) Section 171ZL was inserted by section 4 of the Employment Act 2002.

(133) 2002 c. 21.



(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) calculating or estimating 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 paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(134), 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—

(a) royalties or other sums payable as a consideration for the use of, or the right to use, any copyright, patent or trade mark;

(b) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982(135); and

(c) any payment which is made on an occasional basis.

(6) The period under which any benefit under the benefit Acts is to be taken into account shall be the period in respect of which that benefit is payable.

(7) 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.

(8) The sums specified in Schedule 4 shall be disregarded in calculating—

(a) the claimant's earnings; and

(b) any amount to which paragraph (5) applies if the claimant or his partner is the first owner of the copyright, patent or trade mark, or the author of the book registered under the Public Lending Right Scheme 1982.

(9) Income specified in Schedule 5 is to be disregarded in the calculation of a claimant's income.

(10) An authority may modify this Part so as to provide for disregarding, in determining a woman's income (whether she is the occupier of a dwelling or any other person whose income falls to be aggregated with that of the occupier of a dwelling), the whole or any part of a pension

(134) 2000 c. 19.

(135) The Scheme is set out in the Appendix to S.I. 1982/719.



payable to her as a widow under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(**136**) insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865(**137**), or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(**138**) and any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown, to the extent that such a pension does not fall to be disregarded by virtue of paragraph 1 of Schedule 5.

(11) Schedule 6 shall have effect so that—

- (a) the capital specified in Part 1 shall be disregarded for the purpose of determining a claimant's income; and
- (b) the capital specified in Part 2 shall be disregarded for the purpose of determining a claimant's income under regulation 29(2) (weekly income from capital).

(12) In the case of any income taken into account for the purpose of calculating a person's income, there shall be disregarded any amount payable by way of tax.

(13) An authority may modify this Part so as to provide for disregarding, in determining a person's income (whether he is the occupier of a dwelling or any other person whose income falls to be aggregated with that of the occupier of a dwelling), the whole or any part of any war widower's pension payable to that person.

### **Disregard of changes in tax, contributions etc**

**34.** In calculating the claimant's income the appropriate authority may disregard any legislative change—

- (a) in the basic or other rates of income tax;
- (b) in the amount of any personal tax relief;
- (c) in the rates of social security contributions payable under the Act or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of the Act (small earnings exception in relation to Class 2 contributions);
- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the Act; and
- (e) in the maximum rate of child tax credit or working tax credit,

for a period not exceeding 30 benefit weeks beginning with the benefit week immediately following the date from which the change is effective.

## **SECTION 3**

### *Employed earners*

#### **Earnings of employed earners**

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

- (a) any bonus or commission;

(136) S.I. 1983/883; as amended by S.I. 1983/1116, 1983/1521, 1986/592, 1990/1308, 1991/766, 1992/710, 1995/766, 1997/286, and 2001/409.

(137) 28&29 Vict. c. 73.

(138) 1977 c. 5.

- (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 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001<sup>(139)</sup>;
- (h) statutory sick pay and statutory maternity pay payable by the employer under the Act;
- (i) statutory paternity pay payable under Part 12ZA of the Act<sup>(140)</sup>;
- (j) statutory adoption pay payable under Part 12ZB of the Act<sup>(141)</sup>;
- (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.
- (2) Earnings shall not include—
  - (a) subject to paragraph (3), 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<sup>(142)</sup>;
  - (e) any payment of compensation made pursuant to an award by an employment tribunal<sup>(143)</sup> established under the Employment Tribunals Act 1996<sup>(144)</sup> in respect of unfair dismissal or unlawful discrimination.
- (3) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1)(g).

### Calculation of net earnings of employed earners

**36.**—(1) For the purposes of regulation 30 (calculation of income on a weekly basis), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to regulation 33(5) and Schedule 4, be his net earnings.

<sup>(139)</sup> S.I. 2001/1004.

<sup>(140)</sup> Part 12ZA was inserted by section 2 of the Employment Act 2002 (c. 22).

<sup>(141)</sup> Part 12ZB was inserted by section 4 of the Employment Act 2002.

<sup>(142)</sup> The Scheme is set out in regulation 4 of, and the Schedule to, the European Communities (Iron and Steel Employees Re-adaptation Benefits Scheme) (No. 2) Regulations 1996 (S.I. 1996/3182).

<sup>(143)</sup> Industrial tribunals were renamed employment tribunals under section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and, under the same section, the Industrial Tribunals Act 1996 may be cited as the Employment Tribunals Act 1996.

<sup>(144)</sup> 1996 c. 17

(2) For the purposes of paragraph (1) net earnings shall, except in relation to any payment to which regulation 33(5) refers, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less—

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

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

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

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

(5) Where the earnings of a claimant are determined under sub-paragraph (b) of paragraph (2) of regulation 33 (calculation of weekly income), his net earnings shall be calculated by taking into account those earnings over the assessment period, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under section 257(1) of the Income and Corporation Taxes Act 1988<sup>(145)</sup> (personal allowances) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the Act in respect of those earnings if such contributions were payable; and
- (c) one-half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

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<sup>(145)</sup> 1988 c. 1; section 257 was substituted by the Finance Act 1988 (c. 39), section 33.

**SECTION 4***Self-employed earners***Calculation of earnings of self-employed earners**

**37.**—(1) Where a claimant's earnings consist of earnings from employment as a self-employed earner, the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

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

(2) For the purposes of determining the weekly amount of earnings of a claimant to whom paragraph (1)(b) applies, his earnings over the computation period shall be divided by the number equal to the number of days in that period and multiplying the quotient by 7.

(3) The period over which the weekly amount of a claimant's earnings is calculated in accordance with this regulation shall be his assessment period.

**Earnings of self-employed earners**

**38.**—(1) Subject to paragraph (2), "earnings", in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance paid under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990(**146**) to the claimant for the purpose of assisting him in carrying on his business unless at the date of claim the allowance has been terminated.

- (2) "Earnings" in the case of employment as a self-employed earner 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;
  - (b) any payment made by a local authority to a claimant—
    - (i) with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989(**147**) (provision of accommodation and maintenance for a child whom they are looking after) or, as the case may be, section 26(1) of the Children (Scotland) Act 1995(**148**); or
    - (ii) with whom a local authority foster a child under the Fostering of Children (Scotland) Regulations 1996(**149**);
  - (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, but excluding payments of housing benefit made in respect of the person concerned;
    - (iii) a voluntary organisation;

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(146) 1990 c. 35.

(147) 1989 c. 41.

(148) 1995 c. 36.

(149) S.I. 1996/3263.

- (iv) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948~~(150)~~; or
- (v) a primary care trust established under section 16A of the National Health Service Act 1977~~(151)~~;
- (e) any sports award.

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

**39.**—(1) For the purposes of regulation 30 (calculation of income on a weekly basis) 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 Act calculated in accordance with regulation 40 (deduction of tax and contributions for self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

(2) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (8) applies, be calculated by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax; and
  - (ii) social security contributions payable under the Act,calculated in accordance with regulation 40 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

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

(4) Subject to paragraph (5), no deduction shall be made under paragraph (2)(a) or (3), in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the assessment period;
- (e) the repayment of capital on any loan taken out for the purposes of the employment; and

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**(150)** 1948 c. 29; section 26(3A) was inserted by section 42(4) of the National Health Service and community Care Act 1990 (c. 19).  
**(151)** 1977 c. 49; section 16A was inserted by section 2 of the Health Act 1999 (c. 8).

- (f) any expenses incurred in providing business entertainment.
- (5) A deduction shall be made under paragraph (2)(a) or (3) in respect of the repayment of capital on any loan used for—
  - (a) the replacement in the course of business of equipment or machinery; and
  - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (6) The relevant authority shall refuse to make a deduction in respect of any expenses under paragraph (2)(a) or (3) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.
- (7) For the avoidance of doubt—
  - (a) a deduction shall not be made under paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the business;
  - (b) a deduction shall be made thereunder in respect of—
    - (i) the excess of any value added tax paid over value added tax received in the assessment period;
    - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
    - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (8) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be one-third of the earnings of that employment, less—
  - (a) an amount in respect of—
    - (i) income tax; and
    - (ii) social security contributions payable under the Act,
 calculated in accordance with regulation 40 (deduction of tax and contributions for self-employed earners); and
  - (b) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.
- (9) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.
- (10) The amount in respect of any qualifying premium shall be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying premium shall be determined—
  - (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365;
  - (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.
- (11) In this regulation, “qualifying premium” means any premium which is payable periodically in respect of a retirement annuity contract or a personal pension scheme and is so payable on or after the date of claim.

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

**40.**—(1) The amount to be deducted in respect of income tax under regulation 39(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988(**152**) (personal allowance) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal reliefs deductible under this paragraph shall be calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 39(1)(b)(i), (2)(b)(ii) or (8)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Act at the rate applicable to the assessment period except where the claimant's chargeable income is less than the amount specified in section 11(4) of the Act (small earnings exception) for the tax year applicable to the assessment period; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and
  - (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable to the assessment period on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year applicable to the assessment period; but if the assessment period is less than a year, those limits shall be reduced pro rata.
- (3) In this regulation “chargeable income” means—
- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (2)(a) or, as the case may be, (3) of regulation 39;
  - (b) in the case of employment as a child minder, one-third of the earnings of that employment.

### *SECTION 5*

#### *Other income*

### **Notional income**

**41.**—(1) A claimant shall be treated as possessing—

- (a) subject to paragraph (2), the amount of any retirement pension income—
    - (i) for which no claim has been made; and
    - (ii) to which he might expect to be entitled if a claim for it were made;
  - (b) income from an occupational pension scheme which the claimant elected to defer.
- (2) Paragraph (1)(a) shall not apply to the following where entitlement has been deferred—
- (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the Act;
  - (b) a shared additional pension payable under section 55A of the Act(**153**); and

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(152) 1988 c. 1; sections 257 and 257A were substituted by the Finance Act 1988 (c. 39), section 33.

(153) Section 55A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 6, paragraph 3.



- (c) graduated retirement benefit payable under sections 36 or 37 of the National Insurance Act 1965(**154**).
- (3) For the purposes of paragraph (2), entitlement has been deferred—
- (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the Act;
  - (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the Act;
  - (c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965(**155**).
- (4) Where a person, aged not less than 60, 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—
- (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.
- (5) The amount of any income foregone in a case to which either head (i) or (ii) of paragraph (4) (a) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the relevant authority which shall take account of information provided by the pension fund holder in accordance with regulation 67(6) (evidence and information).
- (6) The amount of any income foregone in a case to which either head (iii) of paragraph (4) (a) or paragraph (4)(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 (5).
- (7) In paragraph (4), “money purchase benefits” has the meaning it has in the Pension Schemes Act 1993(**156**).
- (8) A person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit.
- (9) Where a claimant is in receipt of any benefit (other than housing benefit) under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the relevant authority shall treat the claimant as possessing such benefit at the altered rate—
- (a) in a case in which the claimant’s weekly amount of eligible rent falls to be calculated in accordance with regulation 61(2)(b) (calculation of weekly amounts), from 1st April in that year;

**(154)** 1965 c. 51.**(155)** Section 36(4) is to be replaced by a new section 36(4) and (4A) by [S.I. 2005/454](#) as from 6th April 2005.**(156)** 1993 c. 48; see section 181(1) of that Act.



(b) in any other case, from the first Monday in April in that year, to the date on which the altered rate is to take effect.

(10) In the case of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where a relevant authority treats the claimant as possessing any benefit (other than housing benefit) at the altered rate in accordance with paragraph (9), that authority shall—

- (a) determine the income and capital of that claimant in accordance with regulation 27(1) (calculation of claimant's income in savings credit only cases) where the calculation or estimate of that income and capital is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter; and
- (b) treat that claimant as possessing such income and capital at the altered rate by reference to the period referred to in paragraph (9)(a) or (b), as the case may be.

### **Income paid to third parties**

**42.**—(1) Any payment of income, other than a payment specified in paragraph (2), 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, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980<sup>(157)</sup>; and
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (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.

## **SECTION 6**

### **Capital**

#### **Capital limit**

**43.** For the purposes of section 134(1) of the Act as it applies to housing benefit (no entitlement to benefit if capital exceeds a prescribed amount), the prescribed amount is £16,000.

#### **Calculation of capital**

**44.**—(1) For the purposes of Part 7 of the Act as it applies to housing benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part.

(2) There shall be disregarded from the calculation of the claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 6.

(3) A claimant's capital shall be treated as including any payment made to him by way of arrears of—

- (a) child tax credit;

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<sup>(157)</sup> 1980 c. 46.

- (b) working tax credit;
- (c) state pension credit,

if the payment was made in respect of a period for the whole or part of which housing benefit was paid before those arrears were paid.

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

**45.** Capital which a claimant possesses in the United Kingdom shall be calculated—

- (a) except in a case to which sub-paragraph (b) applies, at its current market or surrender value less—
  - (i) where there would be expenses attributable to sale, 10 per cent.; and
  - (ii) the amount of any encumbrance secured on it;
- (b) in the case of a National Savings Certificate—
  - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date on which the claim is made or treated as made, or the date of any subsequent revision or supersession, at the price which it would have realised on that 1st July, had it been purchased on the last day of that issue;
  - (ii) in any other case, at its purchase price.

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

**46.** 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**

**47.—(1)** A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to housing benefit 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 48 (diminishing notional capital rule).

(2) A person who disposes of capital 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.

(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 44 (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 Part 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.

(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.

### **Diminishing notional capital rule**

**48.**—(1) Where a claimant is treated as possessing capital under regulation 47(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 (3);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
  - (i) that week is a week subsequent to the relevant week; and
  - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied, shall be reduced by the amount determined under paragraph (4).

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

- (a) he is in receipt of housing benefit; and
- (b) but for regulation 47(1), he would have received an additional amount of housing benefit in that week.

(3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to the aggregate of—

- (a) the additional amount to which paragraph (2)(b) refers;
- (b) where the claimant has also claimed state pension credit, the amount of any state pension credit or any additional amount of state pension credit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002<sup>(158)</sup> (notional capital);
- (c) where the claimant has also claimed council tax benefit, the amount of any council tax benefit or any additional amount of council tax benefit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 39(1) of the Council Tax Benefit Regulations 2006 or regulation 37(1) (notional capital) of the Council Tax Benefit (Persons who have obtained the qualifying age for state pensions credit) Regulations 2006;
- (d) where the claimant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations<sup>(159)</sup> (notional capital).

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<sup>(158)</sup> S.I. 2002/1792; paragraph (1) was substituted by S.I. 2002/3197, regulation 2, Schedule, paragraph 6.

<sup>(159)</sup> Relevant amending instruments are S.I. 1998/2117, 1999/2640, 2000/1978, 2001/3767 and 2002/841.

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to housing benefit in the relevant week but for regulation 47(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

- (a) the amount of housing benefit to which the claimant would have been entitled in the relevant week but for regulation 47(1) and, for the purposes of this sub-paragraph, if the relevant week is a week to which regulation 61(4)(a) refers (calculation of weekly amounts), that amount shall be determined by dividing the amount of housing benefit to which he would have been so entitled by the number of days in that week for which he was liable to make payments in respect of the dwelling he occupies as his home and multiplying the quotient so obtained by 7;
- (b) if the claimant would, but for regulation 21 of the State Pension Credit Regulations 2002, have been entitled to state pension credit in respect of the benefit week, within the meaning of regulation 1(2) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the state pension credit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
- (c) if the claimant would, but for regulation 37(1) of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, have been entitled to council tax benefit or to an additional amount of council tax benefit in respect of the benefit week which includes the last day of the relevant week, the amount which is equal to—
  - (i) in a case where no council tax benefit is payable, the amount to which he would have been entitled; or
  - (ii) in any other case, the amount equal to the additional amount of council tax benefit to which he would have been entitled;

and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the council tax benefit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;

- (d) if the claimant would, but for regulation 113 of the Jobseeker's Allowance Regulations, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(3) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income-based jobseeker's allowance to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.

(5) The amount determined under paragraph (4) shall be redetermined under that paragraph if the claimant makes a further claim for housing benefit and the conditions in paragraph (6) are satisfied, and in such a case—

- (a) sub-paragraphs (a) to (d) of paragraph (4) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to paragraph (7), the amount as redetermined shall have effect from the first week following the relevant subsequent week in question.

(6) 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 housing benefit in respect of which he was first treated as possessing the capital in question under regulation 47(1);
    - (ii) in a case where there has been at least one redetermination in accordance with paragraph (5), the date on which he last made a claim for housing benefit which resulted in the weekly amount being redetermined; or
    - (iii) the date on which he last ceased to be entitled to housing benefit,whichever last occurred; and
  - (b) the claimant would have been entitled to housing benefit but for regulation 47(1) of these Regulations or regulation 49(1) of the Housing Benefit Regulations 2006.
- (7) The amount as re-determined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the redetermination and in such a case the higher amount shall continue to have effect.
- (8) For the purposes of this regulation—
- (a) “part-week” in paragraph (4)(b) and (d) means—
    - (i) a period of less than a week which is the whole period for which state pension credit, or, as the case may be, an income-based jobseeker’s allowance, is payable; and
    - (ii) any other period of less than a week for which either of those benefits is payable;
  - (b) “part-week” in paragraph (4)(c) means a period of less than a week for which council tax benefit is allowed;
  - (c) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 47(1)—
    - (i) was first taken into account for the purpose of determining his entitlement to housing benefit; or
    - (ii) was taken into account on a subsequent occasion for the purpose of determining or redetermining his entitlement to housing benefit on that subsequent occasion and that determination or redetermination resulted in his beginning to receive, or ceasing to receive, housing benefit,and where more than one benefit week is identified by reference to heads (i) and (ii) of this sub-paragraph, means the later or latest such benefit week;
  - (d) “relevant subsequent week” means the benefit week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

### **Capital jointly held**

**49.** Where a claimant and one or more other persons are beneficially entitled in possession to any capital asset, other than a capital asset disregarded under regulation 47(3), 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.

## PART 7

### Amount of benefit

#### Maximum housing benefit

**50.** The amount of a person's appropriate maximum housing benefit in any week shall be 100 per cent. of his eligible rent calculated on a weekly basis in accordance with regulation 61 and 62 (calculation of weekly amount and rent free periods) less any deductions in respect of non-dependants which fall to be made under regulation 55 (non-dependant deductions).

#### Housing benefit tapers

**51.** The prescribed percentages for the purpose of sub-section (3)(b) of section 130 of the Act (percentage of excess of income over applicable amount which is deducted from maximum housing benefit) shall be 65 per cent.

#### Reduction where amount payable under regulation 72 of the Housing Benefit Regulations

**52.** Where for any week—

- (a) a person is entitled to a payment in accordance with regulation 72 of the Housing Benefit Regulations 2006 (an “extended payment”); and
- (b) he also claims and is awarded housing benefit,

then the amount of the housing benefit payable in respect of that week shall be reduced by a sum equal to the amount of the extended payment and only the balance (if any) shall be payable to him for that week.

#### Extended payments (severe disablement allowance and incapacity benefit)

**53.—(1)** Except in a case in which a person is in receipt of state pension credit, paragraph (2) shall apply where—

- (a) a person ceases to be entitled to housing benefit—
  - (i) in accordance with regulation 58 (date on which entitlement to housing benefit is to end where entitlement to severe disablement allowance or incapacity benefit ceases); and
  - (ii) the condition referred to in paragraph 1 of Schedule 7 is satisfied in his case; or
- (b) a person ceases to be entitled to housing benefit because he has vacated the dwelling which he occupied as his home and the day on which he did so was either in the week in which he took up employment as an employed or self-employed earner, or in the preceding week, and—
  - (i) he ceased to be entitled to severe disablement allowance or incapacity benefit by reason of taking up employment as an employed or self-employed earner;
  - (ii) he had been entitled to and in receipt of severe disablement allowance, incapacity benefit or a combination of severe disablement allowance and incapacity benefit for a continuous period of at least 26 weeks;
  - (iii) he was not entitled to and in receipt of income support; and
  - (iv) the condition referred to in paragraph 1 of Schedule 7 is satisfied in his case.

(2) A person to whom paragraph (1) applies shall be treated as having made a claim under this regulation and his housing benefit shall be determined in accordance with Schedule 7 and any award

so determined shall be referred to in these regulations as an “extended payment (severe disablement allowance and incapacity benefit)”.

(3) For the purposes of any payment pursuant to this regulation—

- (a) except in a case to which paragraph (b) applies the maximum housing benefit of any person mentioned in paragraph (1) shall be that which was applicable to him in the last week of the award of housing benefit which has ceased as mentioned in paragraph (1);
- (b) the maximum housing benefit of any person the amount of whose extended payment (severe disablement allowance and incapacity benefit) is calculated in accordance with paragraph 6(b)(i) of Schedule 7 shall be determined in accordance with paragraph 7 of that Schedule;
- (c) except in a case to which paragraph (d) applies, any person who meets the requirements of paragraph (1) shall be treated as possessing the same amounts of income and capital as they possessed in the last week of the award of housing benefit which has ceased as mentioned in paragraph (1); and
- (d) any person whose maximum housing benefit is determined in accordance with paragraph 7 of Schedule 7 shall be treated as possessing no income or capital.

(4) Regulations 63, 64 and 67 (claims, evidence and information) shall not apply to a claim pursuant to this regulation and, subject to regulation 61(8) and Part 8 (calculation of weekly amounts and changes of circumstances) shall not apply to any payment under it.

(5) In paragraph (1), references to a “person” include references to a person’s partner and references to taking up employment include receiving remuneration for employment or an increased amount of remuneration for employment or engaging in employment for an increased number of hours.

(6) In a case where payment has been made under this regulation—

- (a) the beneficiary shall be treated for the purpose of these Regulations as though he were entitled to and in receipt of housing benefit—
  - (i) during the 4 weeks immediately following the last day of his entitlement to housing benefit; or
  - (ii) until the date on which his liability for rent ends, whichever occurs first; and
- (b) any claim for housing benefit made by the beneficiary within the period which under subparagraph (a) applies in his case or the 4 weeks thereafter shall be treated as having been made in respect of a period beginning immediately after the end of his previous award of housing benefit.

(7) In paragraph (6), “these Regulations” includes the Regulations as modified by paragraphs 4 and 5 of Schedule 3 to the Consequential Provisions Regulations.

### **Continuing payments where state pension credit claimed**

**54.—**(1) This regulation applies where—

- (a) the claimant is entitled to housing benefit;
- (b) paragraph (2) is satisfied; and
- (c) either—
  - (i) the claimant has attained the qualifying age for state pension credit or, if his entitlement to income-based jobseeker’s allowance continued beyond that age, has attained the age of 65; or
  - (ii) the claimant’s partner has actually claimed state pension credit.

(2) This regulation is only satisfied if the Secretary of State has certified to the relevant authority that the claimant's partner has actually claimed state pension credit or that—

- (a) the claimant's award of—
  - (i) income support has terminated because the claimant has attained the qualifying age for state pension credit; or
  - (ii) income-based jobseeker's allowance has terminated because the claimant has attained the qualifying age for state pension credit or the age of 65; and
- (b) the claimant has claimed or is treated as having claimed or is required to make a claim for state pension credit.

(3) Subject to paragraph (4), in a case to which this regulation applies housing benefit shall continue to be paid for the period of 4 weeks beginning on the day following the day the claimant's entitlement to income support or, as the case may be, income-based jobseeker's allowance, ceased, if and for so long as the claimant otherwise satisfies the conditions for entitlement to housing benefit.

(4) Where housing benefit is paid for the period of 4 weeks in accordance with paragraph (3) above, and the last day of that period falls on a day other than the last day of a benefit week, then housing benefit shall continue to be paid until the end of the benefit week in which the last day of that period falls.

(5) Throughout the period of 4 weeks specified in paragraph (3) and any further period specified in paragraph (4)—

- (a) the whole of the income and capital of the claimant shall be disregarded;
- (b) subject to paragraph (6) the appropriate maximum housing benefit of the claimant shall be that which was applicable in his case immediately before that period commenced.

(6) The appropriate maximum housing benefit shall be calculated in accordance with regulation 50 if, since the date it was last calculated—

- (a) the claimant's rent has increased; or
- (b) a change in the deduction under regulation 55 falls to be made.

### **Non-dependant deductions**

**55.—**(1) Subject to the following provisions of this regulation, the deductions referred to in regulation 50 (maximum housing benefit) shall be—

- (a) in respect of a non-dependant aged 18 or over who is engaged in remunerative work, £47.75;
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, £7.40 per week.

(2) In the case of a non-dependant aged 18 or over to whom paragraph (1)(a) applies because he is in remunerative work, where it is shown to the appropriate authority that his normal weekly gross income is—

- (a) less than £101.00, the deduction to be made under this regulation shall be that specified in paragraph 1(b);
- (b) not less than £101.00 but less than £150.00, the deduction to be made under this regulation shall be £17.00;
- (c) not less than £150.00 but less than £194.00, the deduction to be made under this regulation shall be £23.35;
- (d) not less than £194.00 but less than £258.00, the deduction to be made under this regulation shall be £38.20;



- (e) not less than £258.00 but less than £322.00, the deduction to be made under this regulation shall be £43.50.

(3) Only one deduction shall be made under this regulation in respect of a couple or, as the case may be, members of a polygamous marriage and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of paragraph (2) to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross 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 a couple or members of a polygamous marriage), 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 payments in respect of the dwelling payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—

- (a) blind or treated as blind by virtue of paragraph 6(5) of Schedule 3 (severe disability premiums); or
- (b) receiving in respect of himself either—
  - (i) attendance allowance; or
  - (ii) the care component of the disability living allowance.

(7) No deduction shall be made in respect of a non-dependant if—

- (a) although he resides with the claimant, it appears to the appropriate authority that his normal home is elsewhere; or
- (b) he is in receipt of a training allowance paid in connection with a Youth Training Scheme established under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990(160); or
- (c) he is a full-time student during a period of study within the meaning of regulation 53(1) of the Housing Benefit Regulations 2006 (Students); or
- (d) he is a full time student and during a recognised summer vacation appropriate to his course he is not in remunerative work; or
- (e) he is a full-time student and the claimant or his partner has attained the age of 65; or
- (f) he is not residing with the claimant because he has been a patient for a period in excess of 52 weeks, or a prisoner, and for these purposes—
  - (i) “patient” has the meaning given in paragraph (5) of regulation 22 (applicable amounts);
  - (ii) the period of 52 weeks shall be calculated by reference to paragraph (7) of that regulation as if that paragraph applied in his case; and
  - (iii) “prisoner” means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person who is detained in hospital under the provisions of the Mental Health Act 1983(161), or, in

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(160) 1990 c. 35.

(161) 1983 c. 20.

Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(162)</sup> or the Criminal Procedure (Scotland) Act 1995<sup>(163)</sup>.

(8) No deduction shall be made in calculating the amount of a rent rebate or allowance in respect of a non-dependant aged less than 25 who is on income support or an income-based jobseeker's allowance.

(9) No deduction shall be made in respect of a non-dependant who is on state pension credit.

(10) In the case of a non-dependant to whom paragraph (2) applies because he is in remunerative work, there shall be disregarded from his weekly gross income—

- (a) any attendance allowance or disability living allowance received by him;
- (b) any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds which had his income fallen to be calculated under regulation 40 (calculation of income other than earnings) of the Housing Benefit Regulations 2006 would have been disregarded under paragraph 23 of Schedule 5 (income in kind) to those Regulations; and
- (c) any payment which had his income fallen to be calculated under regulation 40 of the Housing Benefit Regulations 2006 would have been disregarded under paragraph 35 of Schedule 5 to those Regulations (payments made under certain trusts and certain other payments).

### **Minimum housing benefit**

**56.** Where housing benefit is payable in the form of a rent rebate or allowance, it shall not be payable where the amount to which a person would otherwise be entitled is less than 50 pence per benefit week.

## **PART 8**

### **Calculation of weekly amounts and changes of circumstances**

#### **Date on which entitlement is to commence**

**57.—**(1) Subject to paragraph (2), a person who makes a claim for, and is otherwise entitled to, housing benefit shall be entitled to that benefit from the benefit week following the first day in respect of which that claim is made.

(2) A claimant who is otherwise entitled to housing benefit and becomes liable, for the first time, to make payments in respect of the dwelling which he occupies as his home in the benefit week in which the first day in respect of which his claim was made falls, shall be so entitled from that benefit week.

#### **Date on which housing benefit is to end where entitlement to severe disablement allowance or incapacity benefit ceases**

**58.** Except in a case in which the claimant or his partner is in receipt of state pension credit, a claimant's entitlement to housing benefit shall cease at the end of the benefit week in which entitlement to severe disablement allowance or incapacity benefit ceases where—

<sup>(162)</sup>2003 asp 13.

<sup>(163)</sup>1995 c. 46.

- (a) the claimant or his partner was not entitled to and in receipt of income support but was entitled to and in receipt of severe disablement allowance or incapacity benefit and that entitlement has ceased;
- (b) that entitlement to severe disablement allowance or incapacity benefit has ceased by reason of the claimant or his partner—
  - (i) commencing employment as an employed or self-employed earner; or
  - (ii) increasing their earnings from such employment; or
  - (iii) increasing the number of hours worked in such employment;
- (c) the claimant had been entitled to and in receipt of severe disablement allowance or incapacity benefit for a continuous period of at least 26 weeks before the day on which his entitlement to severe disablement allowance or incapacity benefit ceased, and for the purposes of this sub-paragraph—
  - (i) a claimant satisfies the conditions of this sub-paragraph if he has been entitled to and in receipt of a combination of severe disablement allowance and incapacity benefit for at least 26 weeks;
  - (ii) references to the claimant include references to his partner; and
- (d) that work, increase in earnings, or as the case may be, increase in hours is expected to last at least 5 weeks or more.

#### **Date on which change of circumstances is to take effect**

**59.**—(1) Except in cases where regulation 34 (disregard of changes in tax, contributions, etc) of these Regulations or regulation 8(3) of the Decisions and Appeals Regulations applies and subject to the following provisions of this regulation and to regulations 60 and 61(6), a change of circumstances which affects entitlement to, or the amount of, housing benefit (“change of circumstances”) shall take effect from the first day of the benefit week following the date on which the change of circumstances actually occurs, and where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs shall be the day immediately following the last day of entitlement to that benefit.

(2) Subject to paragraphs (8) and (9) and except in a case where regulation 8(3) of the Decisions and Appeals Regulations applies, where the change of circumstances is a change in the amount of rent payable, it shall take effect from the first day of the benefit week in which it actually occurs or, in a case to which regulation 61(2)(b) applies (calculation of weekly amounts), from the day on which it actually occurs.

(3) Subject to paragraphs (8) and (9), where the change of circumstances is an amendment to these Regulations that change, subject to regulation 61(6), shall take effect as follows—

- (a) where the amendment is made by an order under section 150 of the Administration Act (annual up-rating of benefits)—
  - (i) in a case in which the claimant’s weekly amount of eligible rent falls to be calculated in accordance with regulation 61(2)(b) (calculation of weekly amounts), from 1st April;
  - (ii) in any other case, from the first Monday in April,  
in the year in which that order comes into force;
- (b) in respect of any other amendment, from the date on which the amendment of these Regulations comes into force in the particular case.

(4) Subject to paragraphs (8) and (9), if two or more changes of circumstances occurring in the same benefit week would, but for this paragraph, take effect in different benefit weeks in accordance with paragraphs (1), (2) or (3)(a)(i) or (b), they shall take effect from the first day of the benefit

week in which they occur unless one of the changes is a change in the amount of rent payable in a case to which regulation 61(2)(b) applies, in which case they shall take effect from the day on which that change actually occurs.

(5) Where, during a benefit week commencing on the first Monday in April—

- (a) a change of circumstances takes effect in accordance with paragraph (3)(a)(ii);
- (b) one or more changes of circumstances occur to which paragraph (1) applies; and
- (c) no other change of circumstances occurs to which this regulation applies,

any change of circumstances to which paragraph (1) applies and which occurs in that benefit week shall take effect from the first day of that benefit week.

(6) Where the change of circumstances is that income, or an increase in the amount of income, other than a benefit or an increase in the amount of a benefit under the Act, is paid in respect of a past period and there was no entitlement to income of that amount during that period, the change of circumstances shall take effect from the first day on which such income, had it been paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of these Regulations.

(7) Without prejudice to paragraph (6), where the change of circumstances is the payment of income, or arrears of income, in respect of a past period, the change of circumstances shall take effect from the first day on which such income, had it been timeously paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of these Regulations.

(8) Paragraph (9) applies where—

- (a) a change of circumstances would, but for that paragraph, take effect in accordance with paragraph (2), (3)(a)(i) or (b) or (4) on a day that is not the first day of a benefit week; and
- (b) the effect of that change of circumstances is to end entitlement to housing benefit.

(9) In a case to which this paragraph applies, the change of circumstances shall take effect from the first day of the benefit week following the day on which the change of circumstances actually occurred.

(10) Paragraph (11) applies if—

- (a) the claimant or his partner has attained the age of 65; and
- (b) either—
  - (i) a non-dependant took up residence in the claimant's dwelling; or
  - (ii) there has been a change of circumstances in respect of a non-dependant so that the amount of the deduction which falls to be made under regulation 55 (non-dependant deductions) increased.

(11) Where this paragraph applies, the change of circumstances shall take effect from the effective date.

(12) In paragraph (11) but subject to paragraph (13), "the effective date" means—

- (a) where more than one change of a kind referred to in paragraph (10)(b) relating to the same non-dependant has occurred since—
  - (i) the date on which the claimant's entitlement to housing benefit first began; or
  - (ii) the date which was the last effective date in respect of such a change;
 whichever is the later, the date which falls 26 weeks after the date on which the first such change occurred;
- (b) where sub-paragraph (a) does not apply, the date which falls 26 weeks after the date on which the change referred to in paragraph (10)(b) occurred.

(13) If in any particular case the date determined under paragraph (12) is not the first day of the benefit week, the effective date in that case shall be the first day of the next benefit week to commence after the date determined under that paragraph.

#### **Change of circumstances where state pension credit payable**

**60.**—(1) Paragraphs (2) to (4) apply where—

- (a) the claimant is also on state pension credit;
- (b) the amount of state pension credit awarded to him is changed in consequence of a change in the claimant's circumstances or the correction of an official error; and
- (c) the change in the amount of state pension credit payable to the claimant results in a change in the rate of housing benefit payable to the claimant.

(2) Where the change of circumstance is that an increase in the amount of state pension credit payable to the claimant results in—

- (a) an increase in the rate at which housing benefit is payable to him, the change shall take effect from the first day of the benefit week in which state pension credit becomes payable at the increased rate; or
- (b) a decrease in the rate at which housing benefit is payable to him, the change shall take effect from the first day of the benefit week next following the date on which—
  - (i) the local authority receives notification from the Secretary of State of the increase in the amount of state pension credit; or
  - (ii) state pension credit is increased,

whichever is the later.

(3) Where the change of circumstance is that the claimant's state pension credit is reduced and in consequence the rate of housing benefit payable to the claimant reduces—

- (a) in a case where the claimant's state pension credit is reduced because the claimant failed to notify the Secretary of State timeously of the change of circumstances, the change shall take effect from the first day of the benefit week from which state pension credit was reduced; or
- (b) in any other case the change shall take effect from the first day of the benefit week next following the date on which—
  - (i) the local authority receives notification from the Secretary of State of the reduction in the amount of state pension credit; or
  - (ii) state pension credit is reduced,

whichever is the later.

(4) Where the change of circumstance is that—

- (a) state pension credit is reduced; and
- (b) in consequence of the change the rate of housing benefit payable to the claimant is increased,

the change shall take effect from the first day of the benefit week in which state pension credit becomes payable at the reduced rate.

(5) Where a change of circumstances occurs in that an award of state pension credit has been made to the claimant or his partner and this would result in a decrease in the rate of housing benefit payable to the claimant, the change shall take effect from the first day of the benefit week next following the date on which—

- (a) the local authority receives notification from the Secretary of State of the award; or

(b) entitlement to state pension credit begins,  
whichever is the later.

(6) Where, in the case of a claimant who, or whose partner, is or has been awarded state pension credit comprising only the savings credit, there is—

- (a) a change of circumstances of a kind described in any of paragraphs (2) to (5) which results from a relevant calculation or estimate; and
- (b) a change of circumstances which is a relevant determination,

each of which results in a change in the rate of housing benefit payable to the claimant, the change of circumstances referred to in sub-paragraph (b) shall take effect from the day specified in paragraphs (2), (3), (4) or (5) as the case may be, in relation to the change referred to in sub-paragraph (a).

(7) Where a change of circumstance occurs in that a guarantee credit has been awarded to the claimant or his partner and this would result in an increase in the rate of housing benefit payable to the claimant, the change shall take effect from the first day of the benefit week next following the date in respect of which the guarantee credit is first payable.

(8) Where a change of circumstances would but for this paragraph take effect under the preceding provisions of this regulation within the 4 week period specified in regulation 54 (continuing payments where state pension credit claimed), that change shall take effect on the first day of the first benefit week to commence after the expiry of the 4 week period.

(9) Where the change of circumstances is an amendment of these Regulations, that change, subject to regulation 61(6) (calculation of weekly amounts), shall take effect as follows—

- (a) where the amendment is made by an order under section 150 of the Administration Act (annual uprating of benefits)—
  - (i) in a case in which the claimant's weekly amount of eligible rent falls to be calculated in accordance with regulation 61(2)(b), from 1st April;
  - (ii) in any other case, from the first Monday in April, in the year in which that order comes into force;
- (b) in respect of any other amendment, from the date on which the amendment of these Regulations comes into force in the particular case.

(10) In this regulation—

“official error” has the meaning it has in the Decisions and Appeals Regulations by virtue of regulation 1(2) of those Regulations;

“relevant calculation or estimate” means the calculation or estimate made by the Secretary of State of the claimant's or, as the case may be, the claimant's partner's income and capital for the purposes of the award of state pension credit;

“relevant determination” means a change in the determination by the relevant authority of the claimant's income and capital using the relevant calculation or estimate, in accordance with regulation 27(1) (calculation of claimant's income and capital in savings credit only cases).

### **Calculation of weekly amounts**

**61.—**(1) A person's entitlement to housing benefit in any benefit week shall be calculated in accordance with the following provisions of this regulation.

(2) The weekly amount of a claimant's eligible rent shall be—

- (a) subject to paragraph (3), where rent is payable at intervals of one week or a multiple thereof, the amount of eligible rent payable weekly or, where it is payable at intervals of a multiple of a week, the amount determined by dividing the amount of eligible rent payable by the number equal to the number of weeks in respect of which it is payable;

- (b) subject to paragraph (4), where rent is payable at intervals of one month or any other interval which is not a week or a multiple thereof, the amount determined by dividing an amount of that eligible rent by the number equal to the number of days in the period in respect of which it is payable and multiplying the quotient so obtained (referred to in paragraph (4) as the “daily rent”) by 7.
- (3) In the case of a claimant whose weekly amount of eligible rent falls to be calculated in accordance with paragraph (2)(a)—
  - (a) in a case to which regulation 57(2) applies (date on which entitlement is to commence), his eligible rent for the benefit week in which he becomes liable to make payments in respect of the dwelling which he occupies as his home shall be calculated by reference to the amount of eligible rent payable in respect of a week, whether or not his liability to make those payments relates to the whole of that benefit week;
  - (b) where the amount which the claimant is liable to pay is altered during a benefit week his eligible rent for that benefit week shall be calculated by reference to the new amount of eligible rent so payable;
  - (c) where the claimant ceases to occupy as his home the dwelling in respect of which he is entitled to housing benefit, his eligible rent for the benefit week in which he ceases to be liable to make payments in respect of the dwelling which he occupies as his home shall be nil, unless he is liable to make payments in respect of that dwelling for the whole of that benefit week.
- (4) In the case of a claimant whose weekly eligible rent falls to be calculated in accordance with paragraph (2)(b)—
  - (a) in a case to which regulation 57(2) (date on which entitlement is to commence) applies, his eligible rent for the benefit week in which he becomes liable to make payments in respect of the dwelling which he occupies as his home shall be calculated by multiplying his daily rent by the number equal to the number of days in that week for which he is liable to make such payments;
  - (b) where the amount of eligible rent which the claimant is liable to pay is altered during a benefit week, his eligible rent for that week shall be calculated by multiplying his old and new daily rent by the number equal to the number of days in that week which relate respectively to the old and new amounts which he is liable to pay;
  - (c) where the claimant ceases to occupy as his home the dwelling in respect of which he is entitled to housing benefit, his eligible rent for the week in which he ceases to be so liable shall be calculated by multiplying his daily rent by the number equal to the number of days in that week for which he is liable to make such payments.
- (5) In the case of a claimant whose weekly eligible rent falls to be calculated in accordance with paragraph (4)(a) or (c) by reference to the daily rent in his case, his weekly applicable amount, weekly income, the weekly amount of any non-dependant deductions and the minimum amount payable in his case shall be calculated in the same manner as his weekly eligible rent by reference to the amounts determined in his case in accordance with Parts 5 to 7 (applicable amounts, income and capital and amount of benefit).
- (6) Where a change in the amount of a claimant’s applicable amount, income or non-dependant deductions falls to be taken into account in the same benefit week as a change in his eligible rent to which paragraph (4)(b) applies, it shall be taken into account in that week on a daily basis in the same manner and as if it had occurred on the same day as that change in his eligible rent.
- (7) Any amount determined under these Regulations may, if it is appropriate, be rounded to the nearest whole penny by disregarding any amount less than half a penny and treating any amount of half a penny or more as a whole penny.
- (8) In any case where a claimant has received—

- (a) an extended payment under regulation 72 of the Housing Benefit Regulations 2006, his entitlement shall be adjusted in such circumstances and by such amount as are prescribed in Part 3 of Schedule 7 to those Regulations; or
- (b) an extended payment (severe disablement allowance and incapacity benefit), his entitlement shall be adjusted in such circumstances and by such amount as are prescribed in paragraph 9 of Schedule 7 to these Regulations.

### **Rent free periods**

**62.**—(1) This regulation applies to a claimant for any period (referred to in this regulation as a rent free period) in, or in respect of, which he is not liable to pay rent except for any period to which regulation 8(1)(d) (waiver of rent by landlord in return for work done) applies.

(2) In the case of the beginning or ending of a claimant's rent free period—

- (a) where regulation 61(2)(a) (calculation of weekly amounts) applies—
  - (i) his eligible rent for the benefit week in which that period begins shall be nil; and
  - (ii) his eligible rent for the benefit week in which that period ends shall be his weekly eligible rent determined in accordance with regulation 61(2)(a) unless the rent free period lasts for the whole of that benefit week, in which case his eligible rent shall be nil;
- (b) where regulation 61(2)(b) applies, his eligible rent for the benefit week in which the rent-free period begins and ends shall be calculated on a daily basis as if those benefit weeks were weeks to which regulation 61(4) applies.

(3) For the purpose of determining the weekly applicable amount and income of a claimant to whom this regulation applies, the weekly amount of any non-dependant deductions and the minimum amount payable in his case—

- (a) in a case to which regulation 61(2)(a) applies, the amounts determined in his case in accordance with Parts 5 to 7 (applicable amounts, income and capital and amount of benefit) shall be multiplied by 52 or 53, whichever is appropriate, and divided by the number equal to the number of weeks in that 52 or 53 week period in respect of which he is liable to pay rent;
- (b) subject to paragraph (4), in a case to which regulation 61(2)(b) applies, the amounts determined in his case in accordance with Parts 5 to 7 shall be multiplied by 365 or 366, whichever is appropriate and divided by the number of days in that 365 or 366 day period in respect of which he is liable to pay rent.

(4) In a case to which paragraph (3)(b) applies, where either regulation 61(5) or (6) also applies or it is the beginning or end of a rent-free period, the weekly amounts referred to in paragraph (3) shall first be calculated in accordance with sub-paragraph (b) of that paragraph and then determined on a daily basis in the same manner as the claimant's eligible rent.

## **PART 9**

### **Claims**

#### **Who may claim**

**63.**—(1) In the case of a couple or members of a polygamous marriage a claim shall be made by whichever one of them they agree should so claim or, in default of agreement, by such one of them as the relevant authority shall determine.



(2) Where a person who is liable to make payments in respect of a dwelling is unable for the time being to act, and—

- (a) a receiver has been appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf; or
- (b) in Scotland, his estate is being administered by a judicial factor or any guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000<sup>(164)</sup> who has power to claim or, as the case may be, receive benefit on his behalf; or
- (c) an attorney with a general power or a power to claim or as the case may be, receive benefit, has been appointed by that person under the Powers of Attorney Act 1971<sup>(165)</sup> or the Enduring Powers of Attorney Act 1985<sup>(166)</sup>,

that receiver, judicial factor, guardian or attorney, as the case may be, may make a claim on behalf of that person.

(3) Where a person who is liable to make payments in respect of a dwelling is unable for the time being to act and paragraph (2) does not apply to him, the relevant authority may, upon written application made to them by a person who, if a natural person, is over the age of 18, appoint that person to exercise on behalf of the person who is unable to act, any right to which that person might be entitled under the Act and to receive and deal on his behalf with any sums payable to him.

(4) Where the relevant authority has made an appointment under paragraph (3) or treated a person as an appointee under paragraph (5)—

- (a) it may at any time revoke the appointment;
- (b) the person appointed may resign his office after having given four week's notice in writing to the relevant authority of his intention to do so;
- (c) any such appointment shall terminate when the relevant authority is notified that a receiver or other person to whom paragraph (2)(b) or (c) applies has been appointed.

(5) Where a person who is liable to make payments in respect of a dwelling is for the time being unable to act and the Secretary of State has appointed a person to act on his behalf for the purposes of the Act the relevant authority may if that person agrees treat him as if he had been appointed by them under paragraph (3).

(6) Anything required by these Regulations to be done by or to any person who is for the time being unable to act may be done by or to the receiver, judicial factor, guardian or attorney, if any, or by or to the person appointed or treated as appointed under this regulation and the receipt of any such person so appointed shall be a good discharge to the relevant authority for any sum paid.

(7) Where a claim is made at an office displaying the **ONE** logo, references in this regulation to a “relevant authority” shall be read as including a reference to the “designated authority”.

#### **Time and manner in which claims are to be made**

**64.**—(1) The prescribed time for claiming housing benefit is as regards any day on which, apart from satisfying the condition of making a claim, the claimant is entitled to housing benefit, that day and the period of twelve months immediately following it.

(2) Every claim shall be in writing and made on a properly completed form approved for the purpose by the relevant authority or in such written form as the relevant authority may accept as sufficient in the circumstances of any particular case or class of cases having regard to the sufficiency of the written information and evidence.

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<sup>(164)</sup>2000 asp 4.

<sup>(165)</sup>1971 c. 27.

<sup>(166)</sup>1985 c. 29.

(3) The forms approved for the purpose of claiming shall be provided free of charge by the relevant authority or such persons as they may authorise or appoint for the purpose.

(4) Each relevant authority shall notify the Secretary of State of the address to which claims delivered or sent to the appropriate DWP office are to be forwarded.

(5) A claim—

- (a) may be sent or delivered to the appropriate DWP office where the claimant or his partner is also claiming income support, incapacity benefit, state pension credit or a jobseeker's allowance;
- (b) where it has not been sent or delivered to the appropriate DWP office, shall be sent or delivered to the designated office;
- (c) sent or delivered to the appropriate DWP office, other than one sent on the same form as a claim made to income support, incapacity benefit or a jobseeker's allowance and as approved by the Secretary of State for the purpose of the benefits being claimed, shall be forwarded to the relevant authority within two working days of the date of the receipt of the claim at the appropriate DWP office, or as soon as practicable thereafter;
- (d) may, in the case of a claimant who has attained the age of 16 but not the age of 60 and is not engaged in remunerative work, be sent or delivered to a gateway office;
- (e) may be sent or delivered where the claimant has attained the age of 16 but not the age of 60 to an office or designated authority displaying the **ONE** logo;
- (f) where the claimant has attained the qualifying age for entitlement to state pension credit may be sent or delivered to an authorised office.

(6) Subject to paragraph (11) and to regulation 65 (date of claim where claim sent or delivered to a gateway office) the date on which a claim is made shall be—

- (a) in a case where an award of state pension credit which comprises a guarantee credit has been made to the claimant or his partner and the claim for housing benefit is made within one month of the date on which the claim for state pension credit was received at the appropriate DWP office, the first day of entitlement to state pension credit arising from that claim;
- (b) in a case where a claimant or his partner is a person in receipt of a guarantee credit and he becomes liable for the first time to make payments in respect of the dwelling which he occupies as his home, where the claim is received at the designated office or appropriate DWP office within one month of the claimant first becoming liable for such payments, the date he became liable for those payments;
- (c) in a case where the claimant is the former partner of a person who was, at the date of his death or their separation, entitled to housing benefit and the claimant makes a claim within one month of the date of the death or the separation, that date;
- (d) except where sub-paragraph (a), (b) or (c) is satisfied, in a case where a properly completed claim is received in a designated office, an authorised office or an appropriate DWP office within one month, or such longer period as the relevant authority considers reasonable, of the date on which the claim form was issued following the claimant first notifying, by whatever means, a designated office, an authorised office or an appropriate DWP office of his intention of making a claim, the date of first notification; and
- (e) in any other case, the date on which the claim is received at the designated office, authorised office or appropriate DWP office.

(7) Where a claim received at the designated office has not been made in the manner prescribed in paragraph (2), that claim is for the purposes of these Regulations defective.

(8) Where a claim is defective because—

- (a) it was made on the form approved for the purpose but that form is not accepted by the relevant authority as being properly completed; or
- (b) it was made in writing but not on the form approved for the purpose and the relevant authority does not accept the claim as being in a written form which is sufficient in the circumstances of the case having regard to the sufficiency of the written information and evidence,

the relevant authority may, in a case to which sub-paragraph (a) applies, request the claimant to complete the defective claim or, in the case to which sub-paragraph (b) applies, supply the claimant with the approved form or request further information or evidence.

(9) The relevant authority shall treat a defective claim as if it had been validly made in the first instance if—

- (a) where paragraph (8)(a) applies, the authority receives at the designated office the properly completed claim or the information requested to complete it or the evidence within one month of the request, or such longer period as the relevant authority may consider reasonable; or
- (b) where paragraph (8)(b) applies—
  - (i) the approved form sent to the claimant is received at the designated office properly completed within one month of it having been sent to him; or, as the case may be,
  - (ii) the claimant supplies whatever information or evidence was requested under paragraph (8) within one month of the request,

or within such longer period as the relevant authority may consider reasonable.

(10) A claim which is made on an approved form for the time being is, for the purposes of this regulation, properly completed if completed in accordance with the instructions on the form, including any instructions to provide information and evidence in connection with the claim.

(11) Where the claimant is not entitled to housing benefit in the benefit week immediately following the date of his claim but the relevant authority is of the opinion that unless there is a change of circumstances he will be entitled to housing benefit for a period beginning not later than the seventeenth benefit week following the date on which the claim is made, the relevant authority may treat the claim as made on a date in the benefit week immediately preceding the first benefit week of that period of entitlement and award benefit accordingly.

(12) Paragraph (11) applies in the case of a person who has attained, or whose partner has attained, the age of 59 years and 35 weeks.

(13) Where the claimant makes a claim in respect of a past period (a “claim for backdating”) and, from a day in that period up to the date of the claim for backdating, he had continuous good cause for his failure to make a claim, his claim in respect of that period shall be treated as made on—

- (a) the first day from which he had continuous good cause; or
- (b) the day 52 weeks before the date of the claim for backdating,

whichever fell later.

(14) In this regulation “authorised office” means an office which is nominated by the Secretary of State and authorised by the relevant authority for receiving claims for decision by the relevant authority.

#### **Date of claim where claim sent or delivered to a gateway office**

**65.**—(1) Subject to paragraph (11) of regulation 64, and with the exception of those claims to which paragraph (3) of this regulation refers, where a claim for housing benefit has been sent or delivered to a gateway office in accordance with sub-paragraph (d) of paragraph (5) of regulation 64, the date on which that claim is made shall be—

- (a) in a case where the claimant or his partner—
  - (i) claimed income support or a jobseeker's allowance; but
  - (ii) has no entitlement to income support or an income-based jobseeker's allowance, the first date on which notification is deemed to be given in accordance with paragraph (2), but if that notification is by any means other than a claim which meets the requirements of regulation 64(2) such a claim must be received at a gateway office within one month of that notification;
- (b) in a case where neither the claimant nor his partner is a person on income support or entitled to an income-based jobseeker's allowance, the first date on which notification is deemed to be made in accordance with paragraph (2), but if that notification is by any means other than a claim which meets the requirements of regulation 64(2) such a claim must be received at the gateway office within one month of that notification; or
- (c) in any other case, the date on which the claim for housing benefit is received at the gateway office.

(2) A notification of intention to make a claim is deemed to be given on the date on which notification from the claimant of his intention to claim housing benefit in whatever form is received at a gateway office.

(3) This regulation does not apply to claims which are made at an office of a designated authority in accordance with regulation 64(5)(c).

#### **Date of claim where claim sent or delivered to an office of a designated authority**

**66.**—(1) Where a claim for housing benefit has been sent or delivered to an office of a designated authority in accordance with regulation 64(5)(e), the date on which the claim is made shall be—

- (a) except where paragraph (b) applies, the date the claim is received at the office of the designated authority; or
- (b) where in the one month before the claim is received in an office of a designated authority, the person making the claim or a person acting on his behalf had notified an office of a designated authority of his intention to make such a claim, the date the notification was given.

(2) A notification of intention to make a claim is deemed to be given on the date on which notification of the intention to claim housing benefit is received, in whatever form, from the claimant, or the person acting on his behalf, at an office of a designated authority.

(3) Paragraph (2) applies where neither income support nor a jobseeker's allowance is claimed in conjunction with housing benefit.

(4) Where the person claiming housing benefit in accordance with regulation 64(5)(e), or the partner of that person, has claimed income support or income-based jobseeker's allowance but no award has been made, the date on which the claim for housing benefit is made shall be determined as is sub-paragraphs (a), and (c) of paragraph (1) of regulation 65 applied to that claim as they apply to claims under regulation 64(5)(d).

#### **Evidence and information**

**67.**—(1) Subject to paragraph (2) and to paragraph 5 of Schedule A1(**167**) (treatment of claims for housing benefit by refugees), a person who makes a claim, or a person to whom housing benefit has been awarded, shall furnish such certificates, documents, information and evidence in connection

(167) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 2 for regulation 10A and Schedule A1 (claims by refugees).

with the claim or the award, or any question arising out of the claim or the award, as may reasonably be required by the relevant authority in order to determine that person's entitlement to, or continuing entitlement to, housing benefit and shall do so within one month of being required to do so or such longer period as the relevant authority may consider reasonable.

(2) Nothing in this regulation shall require a person to furnish any certificates, documents, information or evidence relating to a payment to which paragraph (4) applies.

(3) Where a request is made under paragraph (1), the relevant authority shall—

- (a) inform the claimant or the person to whom housing benefit has been awarded of his duty under regulation 69 (duty to notify change of circumstances) to notify the designated office of any change of circumstances; and
- (b) without prejudice to the extent of the duty owed under regulation 69, indicate to him either orally or by notice or by reference to some other document available to him on application and without charge, the kind of change or circumstances which is to be notified.

(4) This paragraph applies to any of the following payments—

- (a) a payment which is—
  - (i) disregarded under paragraph 23 of Schedule 5 to the Housing Benefit Regulations 2006 (income in kind) or paragraph 34 of Schedule 6 to those Regulations (certain payments in kind); and
  - (ii) made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No 2) Trust, the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Charitable Relief Fund;
- (b) a payment which is disregarded under paragraph 35 of Schedule 5 to the Housing Benefit Regulations 2006 or paragraph 24 of Schedule 6 to those Regulations (payments made under certain trusts and certain other payments), other than a payment made under the Independent Living Funds;
- (c) a payment which is disregarded under regulation 55(10)(b) or (c) (income of non-dependant) other than a payment made under the Independent Living Funds.

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

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

(6) Where the pension fund holder receives from a relevant authority a request for details concerning a personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (5) refers, the pension fund holder shall provide the relevant authority with any information to which paragraph (7) refers.

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

- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
- (b) in the case of—
  - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or

- (ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,

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

#### **Amendment and withdrawal of claim**

**68.**—(1) A person who has made a claim may amend it at any time before a decision has been made on it, by a notice in writing delivered or sent to the designated office and any claim so amended shall be treated as if it had been amended in the first instance.

(2) A person who has made a claim may withdraw it at any time before a decision has been made on it, by notice to the designated office, and any such notice of withdrawal shall have effect when it is received.

#### **Duty to notify changes of circumstances**

**69.**—(1) Subject to paragraphs (3) and (5) to (7), if at any time between the making of a claim and a decision being made on it, or during the award of housing benefit, there is a change of circumstances which the claimant, or any person by whom or on whose behalf sums payable by way of housing benefit are receivable, might reasonably be expected to know might affect the claimant's right to, the amount of or the receipt of housing benefit, that person shall be under a duty to notify that change of circumstances by giving notice in writing to the designated office.

(2) In the case of a claimant who sent or delivered his claim to a gateway office in accordance with regulation 65, a change of circumstances may be reported in writing to that office, or to any other gateway office of which he was notified on or with his claim form.

(3) The duty imposed on a person by paragraph (1) does not extend to changes—

- (a) in the amount of rent payable to a housing authority;
- (b) in the age of the claimant or that of any member of his family or of any non-dependants;
- (c) in these Regulations.

(4) Notwithstanding paragraph (3)(b) a claimant shall be required by paragraph (1) to notify the designated office of any change in the composition of his family arising from the fact that a person who was a member of his family is now no longer such a person because he ceases to be a child or young person.

(5) Where a person resides in a postcode district identified in Part 1 or 2 of Schedule 2 to the Social Security (Claims and Information) Regulations 1999<sup>(168)</sup>, he may notify the change of circumstances by giving notice in writing to any office of a designated authority displaying the **ONE** logo.

(6) A person on housing benefit who is also on state pension credit must report—

- (a) changes to his tenancy, but not changes in the amount of rent payable to a housing authority;
- (b) changes affecting the residence or income of any non-dependant normally residing with the claimant or with whom the claimant normally resides;
- (c) any absence from the dwelling which exceeds or is likely to exceed 13 weeks.

<sup>(168)</sup>S.I. 1999/3108.

(7) In addition to the changes required to be reported under paragraph (6) a person whose state pension credit comprises only a savings credit must also report—

- (a) changes affecting a child living with him which may result in a change in the amount of housing benefit payable in his case, but not changes in the age of the child;
- (b) changes affecting child tax credit or child benefit;
- (c) any change in the amount of the claimant's capital to be taken into account which does or may take the amount of his capital to more than £16,000;
- (d) any change in the income or capital of—
  - (i) a non-dependant whose income and capital are treated as belonging to the claimant in accordance with regulation 24 (circumstances in which income of a non-dependant is to be treated as claimant's); or
  - (ii) a person to whom regulation 27(4)(e) refers,and whether such a person or, as the case may be, non-dependant stops living or begins or resumes living with the claimant.

(8) A person who is on housing benefit and on state pension credit need only report to the designated office the changes specified in paragraphs (6) and (7).

## PART 10

### Decisions on questions

#### Decisions by a relevant authority

**70.**—(1) Unless provided otherwise by these Regulations, any matter required to be determined under these Regulations shall be determined in the first instance by the relevant authority.

(2) The relevant authority shall make a decision on each claim within 14 days of the provisions of regulations 64 and 67 (time and manner in which claims are to be made and evidence and information) being satisfied or as soon as reasonably practicable thereafter.

(3) Without prejudice to the generality of the foregoing provisions of this regulation, in a case where a person—

- (a) made the notification specified in paragraph 2 of Schedule 7 to the Housing Benefit Regulations 2006 within 14 days from the day immediately after the day on which his entitlement to income support or an income-based jobseeker's allowance ceased ("the appropriate day") and is treated as having claimed an extended payment under regulation 72(2) of those Regulations; and
- (b) has made a claim, which meets the requirements of regulation 64(2), (7) and (10), within 14 days of the appropriate day,

the relevant authority shall give priority to that claim over other claims which do not fall within the provisions of this paragraph.

#### Notification of decision

**71.**—(1) An authority shall notify in writing any person affected by a decision made by it under these Regulations—

- (a) in the case of a decision on a claim, forthwith or as soon as reasonably practicable thereafter;

- (b) in any other case, within 14 days of that decision or as soon as reasonably practicable thereafter,

and every notification shall include a statement as to the matters set out in Schedule 8.

(2) A person affected to whom an authority sends or delivers a notification of decision may, by notice in writing signed by him, request the authority to provide a written statement setting out the reasons for its decision on any matter set out in the notice.

(3) For the purposes of paragraph (2), where a person affected who requests a written statement is not a natural person, the notice in writing referred to in that paragraph shall be signed by a person over the age of 18 who is authorised to act on that person's behalf.

(4) The written statement referred to in paragraph (2) shall be sent to the person requesting it within 14 days or as soon as is reasonably practical thereafter.

## PART 11

### Payments

#### Time and manner of payment

**72.**—(1) Subject to paragraphs (2) and (3) and regulations 73 to 79 (frequency of payment of rent allowance, payment on account of a rent allowance, payment provisions, offsetting) the relevant authority shall pay housing benefit to which a person is entitled under these Regulations at such time and in such manner as is appropriate, having regard to—

- (a) the times at which and the frequency with which a person's liability to make payment of rent arises; and
- (b) the reasonable needs and convenience of the person entitled thereto.

(2) Where a person's entitlement to housing benefit is less than £1 weekly the relevant authority may pay that benefit at 6 monthly intervals.

(3) Subject to regulations 73 to 78 (frequency of payment of and payment on account of rent allowance, payment provisions), every authority shall make the first payment of any housing benefit awarded by it within 14 days of the receipt of the claim at the designated office or, if that is not reasonably practical, as soon as possible thereafter.

#### Frequency of payment of a rent allowance

**73.**—(1) Subject to the following provisions of this regulation any rent allowance other than a payment made in accordance with regulation 72(2) or (3) or 74 (time and manner of payment, payment on account of rent allowance) shall be paid at intervals of 2 or 4 weeks or one month or, with the consent of the person entitled, at intervals greater than one month.

(2) Except in a case to which paragraph (3) applies, any payment of a rent allowance shall be made, in so far as it is practicable to do so, at the end of the period in respect of which it is made.

(3) Except in a case to which regulation 77(2) applies and subject to paragraph (4), this paragraph applies where payment of a rent allowance is being made to a landlord (which for these purposes has the same meaning as in regulations 76 and 77 (payments to a landlord)), when that payment shall be made—

- (a) at intervals of 4 weeks; and
  - (b) at the end of the period in respect of which it is made.
- (4) Where paragraph (3) applies—



- (a) in a case where the liability in respect of which the rent allowance is paid is monthly, the authority may make payment at intervals of 1 month;
  - (b) in a case where the authority is paying a rent allowance to a landlord in respect of more than one claimant, then the first such payment in respect of any claimant may be made to that landlord at such lesser interval as that authority considers is in the best interest of the efficient administration of housing benefit.
- (5) Except in a case to which paragraph (3) applies, where a person's weekly entitlement to a rent allowance is more than £2 he may require payment at two weekly intervals and the relevant authority shall pay at two weekly intervals in such a case.
- (6) Except in a case to which paragraph (3) applies, the relevant authority may pay a rent allowance at weekly intervals where either—
- (a) it considers that unless the rent allowance is paid at weekly intervals an overpayment is likely to occur; or
  - (b) the person entitled is liable to pay his rent weekly and it considers that it is in his interest that his allowance be paid weekly.
- (7) Subject to paragraphs (2), (3) and (5), the relevant authority may pay a rent allowance to a student once a term.

#### **Payment on account of a rent allowance**

**74.—**(1) Where it is impracticable for the relevant authority to make a decision on a claim for a rent allowance within 14 days of the claim for it having been made and that impracticability does not arise out of the failure of the claimant, without good cause, to furnish such information, certificates, documents or evidence as the authority reasonably requires and has requested or which has been requested by the Secretary of State, the authority shall make a payment on account of any entitlement to a rent allowance of such amount as it considers reasonable having regard to—

- (a) such information which may at the time be available to it concerning the claimant's circumstances; and
  - (b) any relevant determination made by a rent officer in exercise of the Housing Act functions.
- (2) The notice of award of any payment on account of a rent allowance made under paragraph (1) shall contain a notice to the effect that if on subsequent decision of the claim the person is not entitled to a rent allowance, or is entitled to an amount of rent allowance less than the amount of the payment on account, the whole of the amount paid on account or the excess of that amount over the entitlement to an allowance, as the case may be, will be recoverable from the person to whom the payment on account was made.
- (3) Where on the basis of the subsequent decision the amount of rent allowance payable differs from the amount paid on account under paragraph (1), future payments of rent allowance shall be increased or reduced to take account of any underpayment or, as the case may be, overpayment.

#### **Payment to be made to a person entitled**

**75.—**(1) Subject to regulations 76 to 78 (payment to landlords, payment on death) and the following provisions of this regulation, payment of any rent allowance to which a person is entitled shall be made to that person.

- (2) Where a person other than a person who is entitled to a rent allowance made the claim and that first person is a person referred to in regulation 63(2), (3) or (5) (persons appointed to act for a person unable to act), payment may be made to that person.

(3) A person entitled to a rent allowance, although able to act on his own behalf, may request in writing that the appropriate authority make payments to a person, who if a natural person must be aged 18 or more, nominated by him, and the authority may make payments to that person.

#### **Circumstances in which payment is to be made to a landlord**

**76.**—(1) Subject to paragraph (2) and paragraph 8(4) of Schedule A1(**169**) (treatment of claims for housing benefit by refugees), a payment of rent allowance shall be made to a landlord (and in this regulation the “landlord” includes a person to whom rent is payable by the person entitled to that allowance)—

- (a) where under Regulations made under the Administration Act an amount of state pension credit payable to the claimant or his partner is being paid direct to the landlord; or
- (b) where sub-paragraph (a) does not apply and the person is in arrears of an amount equivalent to 8 weeks or more of the amount he is liable to pay his landlord as rent, except where it is in the overriding interest of the claimant not to make direct payments to the landlord.

(2) Any payment of rent allowance made to a landlord pursuant to this regulation or to regulation 77 (circumstances in which payment may be made to a landlord) shall be to discharge, in whole or in part, the liability of the claimant to pay rent to that landlord in respect of the dwelling concerned, except in so far as—

- (a) the claimant had no entitlement to the whole or part of that rent allowance so paid to his landlord; and
- (b) the overpayment of rent allowance resulting was recovered in whole or in part from that landlord.

(3) Where the relevant authority is not satisfied that the landlord is a fit and proper person to be the recipient of a payment of rent allowance no such payment shall be made direct to him under paragraph (1).

#### **Circumstances in which payment may be made to a landlord**

**77.**—(1) Subject to paragraph 8(4) of Schedule A1(**170**) (treatment of claims for housing benefit by refugees), where regulation 76 (circumstances in which payment is to be made to a landlord) does not apply but subject to paragraph (3), a payment of a rent allowance may nevertheless be made to a person’s landlord where—

- (a) the person has requested or consented to such payment;
- (b) payment to the landlord is in the interest of the claimant and his family;
- (c) the person has ceased to reside in the dwelling in respect of which the allowance was payable and there are outstanding payments of rent but any payment under this sub-paragraph shall be limited to an amount equal to the amount of rent outstanding.

(2) Without prejudice to the power in paragraph (1), in any case where in the opinion of the authority—

- (a) the claimant has not already discharged his liability to pay his landlord for the period in respect of which any payment is to be made; and
- (b) it would be in the interests of the efficient administration of housing benefit,

a first payment of a rent allowance following the making of a decision on a claim, or a supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 may

(169) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 2 for regulation 10A and Schedule A1 (claims by refugees).

(170) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 2 for regulation 10A and Schedule A1 (claims by refugees).

be made, in whole or in part, by sending to the claimant an instrument of payment payable to that landlord.

(3) In a case where the relevant authority is not satisfied that the landlord is a fit and proper person to be the recipient of a claimant's rent allowance, the authority may either—

- (a) not make direct payments to the landlord in accordance with paragraph (1); or
- (b) make such payments to the landlord where the authority is satisfied that it is nonetheless in the best interests of the claimant and his family that the payments be made.

(4) In this regulation "landlord" has the same meaning as in regulation 76 and paragraph (2) of that regulation shall have effect for the purposes of this regulation.

### **Payment on death of the person entitled**

**78.**—(1) Subject to paragraphs (3) and (5) where the person entitled to an allowance has died the relevant authority shall make payment either to his personal representative or, where there is none, his next of kin if aged 16 or over.

(2) For the purposes of paragraph (1) "next of kin" means in England and Wales the persons who would take beneficially on an intestacy and in Scotland the persons entitled to the moveable estate on intestacy.

(3) A payment under paragraph (1) or (5) shall not be made unless the landlord, the personal representative or the next of kin, as the case may be, makes written application for the payment of any sum of benefit to which the deceased was entitled, and such written application is sent to or delivered to the relevant authority at its designated office within 12 months of the deceased's death or such longer period as the authority may allow in any particular case.

(4) The authority may dispense with strict proof of title of any person claiming under paragraph (3) and the receipt of such a person shall be a good discharge to the authority for any sum so paid.

(5) Subject to paragraph (3), where the relevant authority determines, before the death of the person first mentioned in paragraph (1), that a rent allowance was payable to his landlord in accordance with regulation 76 or 77, that authority shall pay to that landlord so much of that allowance as does not exceed the amount of rent outstanding at the date of the person's death.

### **Offsetting**

**79.**—(1) Where a person has been paid a sum of housing benefit under a decision which is subsequently revised or further revised, any sum paid in respect of a period covered by a subsequent decision shall be offset against arrears of entitlement under the subsequent decision except to the extent that the sum exceeds the arrears and shall be treated as properly paid on account of them.

(2) Where an amount has been deducted under regulation 85(1) (sums to be deducted in calculating recoverable overpayments) an equivalent sum shall be offset against any arrears of entitlement under the subsequent decision except to the extent that the sum exceeds the arrears and shall be treated as properly paid on account of them.

(3) No amount may be offset under paragraph (1) which has been determined to be an overpayment within the meaning of regulation 80 (meaning of overpayment).

## PART 12

### Overpayments

#### Meaning of overpayment

**80.** In this Part, “overpayment” means any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations (whether on the initial decision as subsequently revised or further revised) and includes any amount paid on account under regulation 74 (payment on account of a rent allowance) which is in excess of the entitlement to housing benefit as subsequently decided.

#### Recoverable overpayments

**81.—**(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraph (4) this paragraph applies to an overpayment caused by an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), “overpayment caused by official error” means an overpayment caused by a mistake made whether in the form of an act or omission by—

- (a) the relevant authority;
- (b) an officer or person acting for that authority;
- (c) an officer of—
  - (i) the Department for Work and Pensions;
  - (ii) Revenue and Customs,acting as such; or
- (d) a person providing services to the Department for Work and Pensions or to the Commissioners for Her Majesty’s Revenue and Customs,

where the claimant, a person acting on his behalf or any other person to whom the payment is made, did not cause or materially contribute to that mistake, act or omission.

(4) Where in consequence of an official error, a person has been awarded a rent rebate to which he was not entitled or which exceeded the benefit to which he was entitled, upon the award being revised any overpayment of benefit, which remains credited to him by the relevant authority in respect of a period after the date on which the revision took place, shall be recoverable.

#### Person from whom recovery may be sought

**82.—**(1) For the purposes of section 75(3)(a) of the Administration Act<sup>(171)</sup> (prescribed circumstances in which an amount recoverable shall not be recovered from the person to whom it was paid), the prescribed circumstance is—

- (a) housing benefit has been paid in accordance with regulation 76 (circumstances in which payment is to be made to the landlord) or regulation 77 (circumstances in which payment may be made to a landlord);
- (b) the landlord has notified the relevant authority or the Secretary of State in writing that he suspects that there has been an overpayment;

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<sup>(171)</sup> Subsection (3) was substituted by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 71.

- (c) it appears to the relevant authority that, on the assumption that there has been an overpayment—
    - (i) there are grounds for instituting proceedings against any person for an offence under section 111A or 112(1) of the Administration Act<sup>(172)</sup> (dishonest or false representations for obtaining benefit); or
    - (ii) there has been a deliberate failure to report a relevant change of circumstances contrary to the requirement of regulation 69 (duty to notify a change of circumstances) and the overpayment occurred as a result of that deliberate failure; and
  - (d) the relevant authority is satisfied that the landlord—
    - (i) has not colluded with the claimant so as to cause the overpayment;
    - (ii) has not acted, or neglected to act, in such a way so as contribute to the period, or the amount, of the overpayment.
- (2) For the purpose of section 75(3)(b) of the Administration Act (recovery from such other person, as well as or instead of the person to whom the overpayment was made), the prescribed person is—
- (a) in a case where the overpayment arose as a consequence of a misrepresentation or failure to disclose a material fact (in either case, whether fraudulently or otherwise) by or on behalf of the claimant or any other person to whom housing benefit has been paid, the person who misrepresented or failed to disclose that material fact;
  - (b) in a case where a recoverable overpayment is made to a claimant who has one or more partners, the claimant's partner or any of his partners;
  - (c) the claimant.
- (3) For the purposes of paragraph (1), "landlord" shall have the same meaning as it has for the purposes of regulation 76.
- (4) For the purposes of paragraph (2)(b), recovery of the overpayment may be by deduction from any housing benefit payable to a partner provided that the claimant and that partner were members of the same household both at the time of the overpayment and when the deduction is made.

### Method of recovery

**83.**—(1) Without prejudice to any other method of recovery, an authority may recover a recoverable overpayment from any person referred to in regulation 82 (persons from whom recovery may be sought) by deduction from any housing benefit to which that person is entitled (including arrears of entitlement after offsetting under regulation 79 (offsetting)) or, where it is unable to do so, may request the Secretary of State to recover any recoverable overpayment from the benefits prescribed in regulation 86 (recovery of overpayments from prescribed benefits).

(2) Subject to paragraphs (4) and (5), where an authority makes deductions permitted by paragraph (1) from the housing benefit it is paying to a claimant (other than deductions from arrears of entitlement), the deduction in respect of a benefit week shall be—

- (a) in a case to which paragraph (3) applies, not more than the amount there specified; and
- (b) in any other case, not more than 3 times five per cent. of the personal allowance for a single claimant aged not less than 25, that five per cent. being, where it is not a multiple of five pence, rounded to the next higher such multiple.

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<sup>(172)</sup>Section 111A was inserted by section 13 of the Social Security Administration (Fraud) Act 1997 (c. 47) and section 112(1) was amended by paragraph 4(2) of Schedule 1 to the same Act and by paragraphs 1 and 6 of the Schedule 6 to the Child Support, Pensions and Social Security Act 2000 (c. 19).

(3) Where an authority makes deductions from housing benefit it is paying to a claimant who has, in respect of the whole or part of the recoverable overpayment—

- (a) been found guilty of an offence whether under a statute or otherwise;
- (b) made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit; or
- (c) agreed to pay a penalty under section 115A of the Administration Act<sup>(173)</sup> and the agreement has not been withdrawn,

the amount deducted under paragraph (2) shall be not more than four times five per cent. of the personal allowance for a single claimant aged not less than 25, but where that five per cent. is not a multiple of 10 pence, it shall be rounded to the nearest 10 pence or, if it is a multiple of 5 pence but not of 10 pence, the next higher multiple of 10 pence.

(4) Where, in the calculation of housing benefit, the amount of earnings or other income falling to be taken into account is reduced by reason of paragraphs 3 to 8 of Schedule 4 (sums to be disregarded in the calculation of earnings) or paragraph 1 of Schedule 5 (sums to be disregarded in the calculation of income other than earnings), the deduction under paragraph (2) may be increased by not more than half the amount of the reduction.

(5) No deduction made under this regulation shall be applied so as to reduce the housing benefit in respect of a benefit week to less than 50 pence.

(6) In this regulation—

“admission after caution” means—

- (i) in England and Wales, an admission after a caution has been administered in accordance with a Code issued under the Police and Criminal Evidence Act 1984<sup>(174)</sup>;
- (ii) in Scotland, admission after a caution has been administered, such admission being duly witnessed by two persons; and

“personal allowance for a single claimant aged not less than 25” means the amount specified in paragraph 1(1)(b) of column 2 of Schedule 3 to the Housing Benefit Regulations 2006 (applicable amounts).

(7) This regulation shall not apply in respect of an offence committed or an admission after caution or an agreement to pay a penalty made before 2nd October 2000.

### **Diminution of capital**

**84.**—(1) Where, in the case of a recoverable overpayment, in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) as to a person’s capital, or an error, other than one to which regulation 81(2) (effect of official error) refers, as to the amount of a person’s capital, the overpayment was in respect of a period (“the overpayment period”) of more than 13 benefit weeks, the relevant authority shall, for the purposes only of calculating the amount of that overpayment—

- (a) at the end of the first 13 benefit weeks of the overpayment period, treat the amount of that capital as having been reduced by the amount of housing benefit overpaid during those 13 weeks;
- (b) at the end of each subsequent period of 13 benefit weeks, if any, of the overpayment period, treat the amount of that capital as having been further reduced by the amount of housing benefit overpaid during the immediately preceding 13 benefit weeks.

<sup>(173)</sup> Section 115A was inserted by the [Social Security Administration \(Fraud\) Act \(c. 47\)](#), section 15; sub-sections (7A) and (7B) were inserted by the Social Security Fraud Act 2001 (c. 11), section 14.

<sup>(174)</sup> 1984 c. 60.

(2) Capital shall not be treated as reduced over any period other than 13 benefit weeks or in any circumstances other than those for which paragraph (1) provides.

#### **Sums to be deducted in calculating recoverable overpayments**

**85.**—(1) Subject to paragraph (2), in calculating the amount of a recoverable overpayment, the relevant authority shall deduct any amount of housing benefit which should have been determined to be payable in respect of the whole or part of the overpayment period—

- (a) on the basis of the claim as presented to the authority;
- (b) on the basis of the claim as it would have appeared had any misrepresentation or non-disclosure been remedied before the decision; or
- (c) on the basis of the claim as it would have appeared if any change of circumstances had been notified at the time that change occurred.

(2) In the case of rent rebate only, in calculating the amount of a recoverable overpayment the relevant authority may deduct so much of any payment by way of rent in respect of the overpayment period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous determination.

#### **Recovery of overpayments from prescribed benefits**

**86.**—(1) For the purposes of section 75(4) of the Administration Act (recovery of overpaid housing benefit by deduction from other benefits), the benefits prescribed by this regulation are—

- (a) any benefit except guardian's allowance;
- (b) income support under Part 7 of the Act;
- (c) any benefit payable under the legislation of any member State other than the United Kingdom concerning the branches of social security mentioned in Article 4(1) of Regulation (EEC) No 1408/71<sup>(175)</sup> on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation;
- (d) a jobseeker's allowance;
- (e) state pension credit.

(2) Where the Secretary of State is satisfied that—

- (a) a recoverable overpayment of housing benefit has been made, in consequence of a misrepresentation of or failure to disclose a material fact (in either case whether fraudulently or otherwise), by or on behalf of a claimant or any other person to whom a payment of housing benefit has been made; and
- (b) the person who misrepresented that fact or failed to disclose it is receiving a sufficient amount of one or more of the benefits prescribed in paragraph (1) to enable deductions to be made for the recovery of the overpayment,

he shall, if requested to do so by an authority under regulation 83 (method of recovery), recover the overpayment by deduction from any of those benefits.

(3) In paragraph (1)(a), "benefit" has the meaning it has in section 122(1) of the Act.

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<sup>(175)</sup>O.J. No. L149, 5.7.1971; Regulations No. 1408/71 and No. 574/72 were restated in amended form in Regulation No. 2001/83 (O.J. No. L230, 22.8.1983), and further amended by Council Regulation (EEC) No. 1661/85 (O.J. No. L160, 20.6.1985) and Commission Regulation (EEC) No. 513/86 (O.J. No. L51, 28.2.1986).

**Prescribed benefits**

**87.**—(1) The benefits prescribed for the purposes of section 75(5) and (7) of the Administration Act<sup>(176)</sup> (recovery of overpayments) are those set out in the following paragraphs.

(2) Prescribed benefits within section 75(5)(a) of the Administration Act (benefits to which a landlord or agent is entitled) are—

- (a) housing benefit; and
- (b) those benefits prescribed from time to time in regulation 86(1) (recovery of overpayments from prescribed benefits), but only in cases where—
  - (i) an authority has, pursuant to regulation 83 (method of recovery), requested the Secretary of State to recover an overpayment of housing benefit from such benefits; and
  - (ii) the Secretary of State is satisfied as to the matters prescribed in paragraph (2)(a) and (b) of regulation 86.

(3) Housing benefit is prescribed for the purposes of section 75(5)(b) or (c) of the Administration Act (benefits paid to a landlord or agent to discharge an obligation owed by another person).

(4) Prescribed benefits within section 75(7) of the Administration Act (benefits recoverable from the county court or the sheriff court) are housing benefit and those benefits prescribed from time to time in regulation 86(1).

**Restrictions on recovery of rent and consequent notifications**

**88.**—(1) Where, pursuant to section 75(5)(b) of the Administration Act, an amount has been recovered by deduction from housing benefit paid to a person (referred to as “the landlord” in this regulation) to discharge (in whole or in part) an obligation owed to him by the person on whose behalf the recoverable amount was paid (referred to as “the tenant” in this regulation) that obligation shall, in a case to which paragraph (2) applies, be taken to be discharged by the amount of the deduction.

(2) This paragraph applies in a case where the amount recoverable from the landlord relates to an overpayment of housing benefit in relation to which the landlord has—

- (a) agreed to pay a penalty pursuant to section 115A of the Administration Act<sup>(177)</sup> (penalty as an alternative to prosecution); or
- (b) been convicted of an offence arising under the Act or any other enactment.

(3) In any case to which paragraph (2) applies or will apply when recovery is made the authority that has determined that there is an overpayment and that it is recoverable from the landlord shall notify both the landlord and the tenant that—

- (a) the overpayment that it has recovered or that it has determined to recover (“the sum”) is or will be one to which paragraph (2) applies; and
- (b) the landlord has no right in relation to that sum against the tenant, and that his obligation to the landlord shall be taken to be discharged by the amount so recovered.

<sup>(176)</sup> Inserted by Social Security Administration (Fraud) Act 1997 (c. 47), section 16.

<sup>(177)</sup> Section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47); sub-sections (7A) and (7B) were inserted by the Social Security Fraud Act 2001 (c. 11), section 14.



## PART 13

### Information

#### SECTION 1

##### *Claims and information*

#### **Interpretation**

**89.** In this Section—

“local authority” means an authority administering housing benefit;

“relevant authority” means—

(a) the Secretary of State;

(b) a person providing services to the Secretary of State;

“relevant information” means information or evidence relating to the administration of claims to or awards of housing benefit.

#### **Collection of information**

**90.**—(1) A relevant authority may obtain relevant information, from—

(a) persons making, or who have made, claims to housing benefit; or

(b) other persons in connection with such claims.

(2) In paragraph (1) above references to persons who have made claims to housing benefit include persons to whom awards of benefit have been made on those claims.

#### **Recording and holding information**

**91.** A relevant authority which obtains relevant information or to whom such information is supplied shall—

(a) make a record of such information; and

(b) hold that information, whether as supplied or obtained or as recorded.

#### **Forwarding of information**

**92.** A relevant authority which holds relevant information—

(a) shall forward it to the person or authority for the time being administering claims to or awards of housing benefit to which the relevant information relates, being either—

(i) a local authority;

(ii) a person providing services to a local authority; or

(iii) a person authorised to exercise any function of a local authority relating to housing benefit; and

(b) may continue to hold a record of such information, whether as supplied or obtained or recorded, for such period as it considers appropriate.

**Request for information**

**93.** A relevant authority which holds information or evidence relating to social security matters shall forward such information or evidence as may be requested to the person or authority making that request, provided that—

- (a) the request is made by—
  - (i) a local authority;
  - (ii) a person providing services to a local authority; or
  - (iii) a person authorised to exercise any function of a local authority relating to housing benefit; and
- (b) the information or evidence requested includes relevant information;
- (c) the relevant authority is able to provide the information or evidence requested in the form in which it was originally supplied or obtained; and
- (d) provision of the information or evidence requested is considered necessary by the relevant authority to the proper performance by a local authority of its functions relating to housing benefit.

**SECTION 2***Evidence and Information***Interpretation**

**94.** In this Section—

“the notice” means the notice prescribed in regulation 99(1)(b) (circumstances for requiring information);

“relevant information” means such information as is prescribed in regulation 100 (relevant information);

“the requirer” means a person within regulation 98 (requiring information from landlords and agents), who requires information pursuant to that regulation;

“the supplier” means an appropriate person who is required, pursuant to regulations 98 and 99, to supply relevant information and any person who is not so required is not, for the purpose of supplying information pursuant to section 126A of the Administration Act(178) and these Regulations, an appropriate person.

**Evidence and information required by rent officers**

**95.** The relevant authority shall furnish as soon as is reasonably practicable such information or evidence relating to a claimant and his accommodation obtained by it in exercise of its functions relating to housing benefit as may be required by a rent officer for the purpose of a function conferred on him by an order under section 122 of the Housing Act 1996(179).

**Information to be supplied by an authority to another authority**

**96.—(1)** For the purposes of section 128A of the Administration Act(180) (duty of an authority to disclose information to another authority) the circumstances in which information is to be disclosed

(178) Inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 11.

(179) 1996 c. 52; amended by the Local Government Act 2003 (c. 26), section 127 and paragraph 6 of Schedule 7.

(180) Section 128A was inserted by section 28(2) of the Jobseekers Act 1995 (c. 18).

are prescribed in paragraph (2) and the information prescribed by this regulation is described in paragraph (3).

(2) The circumstances prescribed in this paragraph are, where—

- (a) there is a mover who is or was in receipt of housing benefit from local authority “A”;
- (b) either his second dwelling is within the area of another authority “B” or he is liable or treated as liable to make payments in respect of his second dwelling to housing authority B; and
- (c) either—
  - (i) a payment under regulation 72 of the Housing Benefit Regulations 2006 is claimed from authority A; or
  - (ii) such a payment is claimed from authority B, who then requests the prescribed information from authority A,

authority A shall disclose to authority B the information prescribed in paragraph (3).

(3) The information to be disclosed is—

- (a) in a case where the payment under regulation 72 of the Housing Benefit Regulations 2006 was claimed from authority A, details relevant to that claim of—
  - (i) the matters certified pursuant to regulation 72 of and paragraph 1 of Schedule 7 to the Housing Benefit Regulations 2006;
  - (ii) the matters notified pursuant to regulation 72 of and paragraph 2 of that Schedule;
  - (iii) the date it was so claimed;
- (b) in the case of a person to whom regulation 6(5) of the Income Support Regulations<sup>(181)</sup> (persons not treated as engaged in remunerative work) applies—
  - (i) the date on which he was first engaged in the work referred to in sub-paragraph (a) of regulation 6(5) of those Regulations; and
  - (ii) the date on which his entitlement to income support ceased or was expected to cease; and
- (c) in any case—
  - (i) the weekly rate of housing benefit awarded to the mover by authority A;
  - (ii) if any deduction was being made from that benefit in respect of non-dependants, pursuant to regulations 50 (maximum housing benefit) and 55 (non-dependant deductions), the amount of those deductions;
  - (iii) if any deduction was being made from that benefit in respect of a recoverable overpayment pursuant to regulation 83 (method of recovery), the amount of those deductions;
  - (iv) the date on which his entitlement to housing benefit ceased;
  - (v) if a payment under regulation 72 of the Housing Benefit Regulations 2006 was made to the mover, the amount and date of any such payment; and
  - (vi) if no such payment was made, why none was made.

(4) In this regulation, “mover”, “the relevant day” and “second-dwelling” have the meanings assigned to them in paragraph 11 of Schedule 7 to the Housing Benefit Regulations 2006.

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<sup>(181)</sup> S.I. 1987/1967; the relevant amending Instrument is S.I. 2001/488.

**Supply of information: extended payments (severe disablement allowance and incapacity benefit)**

**97.**—(1) For the purposes of section 122E(3) of the Administration Act(**182**) (duty of an authority to supply information to another authority) the circumstances in which information is to be supplied are prescribed in paragraph (2) and the information prescribed by this regulation is described in paragraph (3).

(2) The circumstances prescribed in this paragraph are, where—

- (a) there is a mover who is or was in receipt of housing benefit from a local authority “A”;
- (b) either his second dwelling is within the area of another local authority “B” or he is liable or treated as liable to make payments in respect of his second dwelling to housing authority B; and
- (c) either—
  - (i) the extended payment (severe disablement allowance and incapacity benefit) is claimed from authority A; or
  - (ii) the extended payment (severe disablement allowance and incapacity benefit) is claimed from authority B, who then requests the information described in paragraph (3) from authority A,

authority A shall supply to authority B that information.

(3) The information to be supplied is—

- (a) in a case where that extended payment (severe disablement allowance and incapacity benefit) was claimed from authority A, details relevant to that claim of—
  - (i) the matters set out in regulation 58 or regulation 53(1)(b)(i) to (iii), as the case may be; and
  - (ii) the matters notified pursuant to regulation 53(1)(a)(ii) or (b)(iv), as the case may be; and
  - (iii) the date it was so claimed; and
- (b) in any case—
  - (i) the weekly rate of housing benefit awarded to the mover by authority A;
  - (ii) if any deduction was being made from that benefit in respect of non-dependants, pursuant to regulations 50 and 55, the amount of those deductions;
  - (iii) if any deduction was being made from that benefit in respect of a recoverable overpayment pursuant to regulation 83, the amount of those deductions;
  - (iv) the date on which his entitlement to housing benefit ceased;
  - (v) if an extended payment (severe disablement allowance and incapacity benefit) was made to the mover, the amount and date of any such payment; and
  - (vi) if no extended payment (severe disablement allowance and incapacity benefit) was made, why none was made.

(4) In this regulation “mover” and “second dwelling” shall have the meanings assigned to them in paragraph 10 of Schedule 7.

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(**182**) Section 122E was inserted by section 3 of the Social Security Administration (Fraud) Act 1997 (c. 47).

### **Requiring information from landlords and agents**

**98.** Pursuant to section 126A of the Administration Act<sup>(183)</sup>, where a claim is made to an authority, on which a rent allowance may be awarded, then, in the circumstances prescribed in regulation 99 (circumstances for requiring information), that authority, or any person authorised to exercise any function of the authority relating to housing benefit, may require an appropriate person to supply to that authority or person relevant information, in the manner prescribed in regulation 101 (manner of supply of information).

### **Circumstances for requiring information**

**99.**—(1) A person is required to supply information in the following circumstances—

- (a) he is an appropriate person in relation to any dwelling in respect of which—
  - (i) housing benefit is being paid to an appropriate person pursuant to regulation 76 or 77 (circumstances in which payment is to be or may be made to a landlord); or
  - (ii) a request has been made by an appropriate person or by the claimant for housing benefit to be so paid; and
- (b) the requirer serves upon that appropriate person, whether by post or otherwise, a written notice stating that the requirer—
  - (i) suspects that there is or may be an impropriety in relation to a claim in respect of any dwelling wherever situated in relation to which he is an appropriate person; or
  - (ii) is already investigating an allegation of impropriety in relation to that person.

(2) Information required to be supplied under paragraph (1) shall be supplied to the requirer at the address specified in the notice.

### **Relevant information**

**100.**—(1) The information the supplier is to supply to the requirer is that prescribed in paragraphs (2) and (3) (referred to in this Part as “the relevant information”).

(2) For a supplier who falls within paragraph (4) or section 126A(2)(b) of the Administration Act (“the landlord”), the information is—

- (a) where the landlord is a natural person—
  - (i) his appropriate details;
  - (ii) the relevant particulars of any residential property in which he has an interest; and
  - (iii) the appropriate details of any body corporate, in which he is a major shareholder or of which he is a director and which has an interest in residential property;
- (b) where the landlord is a trustee, except a trustee of a charity, in addition to any information that he is required to supply in accordance with sub-paragraph (a) or (c), as the case may be, the relevant particulars of any residential property held by the trust of which he is a trustee and the name and address of any beneficiary under the trust or the objects of that trust, as the case may be;
- (c) where the landlord is a body corporate or otherwise not a natural person, other than a charity—
  - (i) its appropriate details;
  - (ii) the relevant particulars of any residential property in which it has an interest;
  - (iii) the names and addresses of any directors of it;

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<sup>(183)</sup>Section 126A was inserted by section 11 of the Social Security Administration (Fraud) Act 1997 (c. 47).

- (iv) the appropriate details of any person—
  - (aa) who owns 20 per cent. or more of it; or
  - (bb) of whom it owns 20 per cent. or more; and
- (v) the names and addresses of its major shareholders;
- (d) where the landlord is a charity or is a recognised body the appropriate details relating to the landlord and particulars of the landlord's registration as a charity.
- (3) For a supplier who falls within section 126A(2)(c) of the Administration Act or paragraph (5) ("the agent"), the information is—
  - (a) the name and address of any person ("his principal")—
    - (i) to whom the agent has agreed to make payments in consequence of being entitled to receive relevant payments; or
    - (ii) for whom the agent is acting on behalf of or in connection with any aspect of the management of a dwelling,
 as the case may be;
  - (b) the relevant particulars of any residential property in respect of which the agent—
    - (i) has agreed to make payments in consequence of being entitled to receive relevant payments; or
    - (ii) is acting on behalf of his principal in connection with any aspect of its management;
  - (c) where the agent is a natural person—
    - (i) the relevant particulars of any residential property in which he has an interest;
    - (ii) the appropriate details of any body corporate or any person not a natural person, in which he is a major shareholder or of which he is a director and which has any interest in residential property; or
  - (d) where the agent is a body corporate or other than a natural person—
    - (i) the relevant particulars of any residential property in which it has an interest;
    - (ii) the names and addresses of any directors of or major shareholders in the agent; and
    - (iii) the appropriate details of any person—
      - (aa) who owns 20 per cent. or more of the agent; or
      - (bb) of whom the agent owns 20 per cent. or more.
- (4) A supplier falls within this paragraph (landlord receiving rent), if he falls within section 126A(2)(a) of the Administration Act, but does not fall within paragraph (5).
- (5) A supplier falls within this paragraph (agent receiving the rent), if he falls within subsection (2)(a) of section 126A of the Administration Act and has agreed to make payments, in consequence of being entitled to receive relevant payments, to a person falling within subsection (2) (b) of that section.
- (6) For the purposes of this regulation—
 

"appropriate details" means the name of the person and (in the case of a company) its registered office and, in any case, the full postal address, including post code, of the principal place of business of that person and the telephone and facsimile number (if any) of that place;

"charity" means a charity which is registered under section 3 of the Charities Act 1993<sup>(184)</sup> and is not an exempt charity within the meaning of that Act;

<sup>(184)</sup>1993 c. 10.

“major shareholder” means, where a body corporate is a company limited by shares, any person holding one tenth or more of the issued shares in that company and, in any other case, all the owners of that body;

“recognised body” has the same meaning as in section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(185)</sup>;

“relevant particulars” means the full postal address, including post code, and number of current lettings of or within that residential property and, if that property includes two or more dwellings, that address and the number of such lettings for each such dwelling;

“residential property” includes any premises, situated within the United Kingdom—

- (i) used or which has, within the last six months, been used; or
- (ii) which may be used or is adapted for use,

as residential accommodation,

and other expressions used in this regulation and also in the Companies Act 1985<sup>(186)</sup> shall have the same meaning in this regulation as they have in that Act.

### **Manner of supply of information**

**101.**—(1) Subject to paragraph (2), the relevant information shall be supplied—

- (a) in typewritten or printed form; or
- (b) with the written agreement of the inquirer, in electronic or handwritten form,

within a period of 4 weeks commencing on the date on which the notice was sent or given.

(2) Where—

- (a) within a period of 4 weeks commencing on the date on which the notice was sent or given, the supplier requests that the time for the supply of the relevant information be extended; and
- (b) the requirer provides written agreement to that request,

the time for the supply of the relevant information shall be extended to a period of 8 weeks commencing on the date on which the notice was sent or given.

### **Criminal offence**

**102.** Any failure by the supplier to supply relevant information to the requirer as, when and how required under regulations 98 to 101 shall be an offence under section 113 of the Administration Act<sup>(187)</sup> and there may be recovered from the supplier, on summary conviction for this offence, penalties not exceeding—

- (a) for any one offence, level 3 on the standard scale; or
- (b) for an offence of continuing any such failure after conviction, £40 for each day on which it is so continued.

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<sup>(185)</sup> 1990 c. 40.

<sup>(186)</sup> 1985 c. 6.

<sup>(187)</sup> Section 113 was substituted by the Social Security Act 1998 (c. 14).

## PART 14

### Pathfinder authorities

#### **Modifications in respect of pathfinder authorities**

**103.**—(1) In this regulation and Schedule 9, “pathfinder authority” means a relevant authority specified in Part 1 of that Schedule.

(2) The provisions of Part 2 of Schedule 9 apply in relation to the area of a pathfinder authority on and after the date specified in Part 1 in relation to that authority.

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

2nd February 2006

*James Plaskitt*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions



## SCHEDULE 1

Regulation 11

### Ineligible service charges

#### PART 1

#### Service charges other than for fuel

##### Ineligible service charges

1. The following service charges shall not be eligible to be met by housing benefit—
  - (a) charges in respect of day-to-day living expenses including, in particular, all provision of—
    - (i) subject to paragraph 2 meals (including the preparation of meals or provision of unprepared food);
    - (ii) laundry (other than the provision of premises or equipment to enable a person to do his own laundry);
    - (iii) leisure items such as either sports facilities (except a children's play area), or television rental and licence fees (except radio relay charges, charges made in respect of the conveyance and the installation and maintenance of equipment for such conveyance of a television broadcasting service which is not a domestic satellite service, or charges made in respect of the conveyance and the installation and maintenance of equipment for such conveyance of a television programme service where in respect of the claimant's dwelling the installation of such equipment is the only practicable means of conveying satisfactorily a television broadcasting service which is not a domestic satellite service, as these services are defined in the Broadcasting Act 1990<sup>(188)</sup>);
    - (iv) cleaning of rooms and windows except cleaning of—
      - (aa) communal areas; or
      - (bb) the exterior of any windows where neither the claimant nor any member of his household is able to clean them himself,where a payment is not made in respect of such cleaning by a local authority (including, in relation to England, a county council) or the National Assembly for Wales to the claimant or his partner, or to another person on their behalf; and
    - (v) transport;
  - (b) charges in respect of—
    - (i) the acquisition of furniture or household equipment; and
    - (ii) the use of such furniture or equipment where that furniture or household equipment will become the property of the claimant by virtue of an agreement with the landlord;
  - (c) charges in respect of the provision of an emergency alarm system;
  - (d) charges in respect of medical expenses (including the cost of treatment or counselling related to mental disorder, mental handicap, physical disablement or past or present alcohol or drug dependence);
  - (e) charges in respect of the provision of nursing care or personal care (including assistance at meal-times or with personal appearance or hygiene);

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<sup>(188)</sup>1990 c. 42.

*Status: This is the original version (as it was originally made).*

- (f) charges in respect of general counselling or of any other support services, whoever provides those services;
- (g) charges in respect of any services not specified in sub-paragraphs (a) to (f) which are not connected with the provision of adequate accommodation.

### **Amount ineligible for meals**

2.—(1) Where a charge for meals is ineligible to be met by housing benefit under paragraph 1, the amount ineligible in respect of each week shall be the amount specified in the following provisions of this paragraph.

(2) Subject to sub-paragraph (4), where the charge includes provision for at least three meals a day, the amount shall be—

- (a) for a single claimant, £20.05;
- (b) if the claimant is a member of a family—
  - (i) for the claimant and for each member of his family aged 16 or over, £20.05;
  - (ii) for each member of his family under age 16, £10.15.

(3) Except where sub-paragraph (5) applies and subject to sub-paragraph (4), where the charge includes provision for less than three meals a day, the amount shall be—

- (a) for a single claimant, £13.35;
- (b) if the claimant is a member of a family—
  - (i) for the claimant and for each member of his family aged 16 or over, £13.35;
  - (ii) for each member of his family under age 16, £6.70.

(4) For the purposes of sub-paragraphs (2)(b) and (3)(b), a person attains the age of 16 on the first Monday in September following his 16th birthday.

(5) Where the charge for meals includes the provision of breakfast only, the amount for the claimant and, if he is a member of a family, for the claimant and for each member of his family, shall be £2.45.

(6) Where a charge for meals includes provision for meals for a person who is not a member of the claimant's family sub-paragraphs (2) to (5) shall apply as if that person were a member of the claimant's family.

(7) For the avoidance of doubt where the charge does not include provision for meals for a claimant or, as the case may be, a member of his family, sub-paragraphs (2) to (5) shall not apply in respect of that person.

### **Amount of ineligible charges**

3.—(1) Subject to paragraph 2 where an ineligible service charge is not separated from or separately identified within other payments made by the occupier in respect of the dwelling, the appropriate authority shall apportion such charge as is fairly attributable to the provision of that service, having regard to the cost of comparable services and such portion of those payments shall be ineligible to be met by housing benefit.

(2) Subject to paragraph 2, where the relevant authority considers that the amount of any ineligible service charge which is separately identified within other payments made by the occupier in respect of the dwelling is unreasonably low having regard to the service provided, it shall substitute a sum for the charge in question which it considers represents the value of the services concerned and the amount so substituted shall be ineligible to be met by housing benefit.

(3) In sub-paragraph (2) the expression “ineligible service charge” includes any service charge which does not qualify as a periodical payment under regulation 12(1)(e) (rent).

(4) In any other case, the whole amount of the ineligible service charge shall be ineligible to be met by housing benefit.

#### **Excessive service costs**

4. Subject to paragraph 2, where the relevant authority considers that the amount of a service charge to which regulation 12(1)(e) (rent) applies is excessive in relation to the service provided for the claimant or his family, having regard to the cost of comparable services, it shall make a deduction from that charge of the excess and the amount so deducted shall be ineligible to be met by housing benefit.

## **PART 2**

### **Payments in respect of fuel charges**

5. A service charge for fuel except a charge in respect of services for communal areas shall be ineligible to be met by housing benefit.

6.—(1) Where a charge is ineligible to be met by housing benefit under paragraph 5—

- (a) in the calculation of entitlement to a rent rebate; or
- (b) in the calculation of entitlement to a rent allowance if the amount of the charge is specified or is otherwise readily identifiable (except where the amount of the charge is unrealistically low in relation to the fuel provided or the charge cannot readily be distinguished from a charge for a communal area),

the amount ineligible to be met by housing benefit shall be the full amount of the service charge.

(2) In any other case, subject to sub-paragraphs (3) and (4) and paragraph 7, the amount ineligible to be met by housing benefit shall be the following amounts in respect of each week—

- (a) for heating (other than hot water) £10.55;
- (b) for hot water £1.25;
- (c) for lighting £0.85;
- (d) for cooking £1.25.

(3) Where the accommodation occupied by the claimant or, if he is a member of a family, by the claimant and the members of his family, consists of one room only, the amount ineligible to be met by housing benefit in respect of each week where heating only is, or heating and either hot water or lighting (or both) are, provided, shall be one-half of the aggregate of the amounts specified in sub-paragraphs (2)(a), (b) and (c).

(4) In a case to which sub-paragraph (2) or (3) applies, if a claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, the amount ineligible to be met by housing benefit under this paragraph shall be that estimated amount.

7.—(1) Where rent is payable other than weekly, any amount ineligible to be met by housing benefit which is specified in this Schedule as a weekly amount shall—

- (a) where rent is payable in multiples of a week, be multiplied by the number equal to the number of weeks in respect of which it is payable; or

- (b) in any other case, be divided by 7 and multiplied by the number of days in the period to be used by the relevant authority for the purpose of calculating the claimant's weekly eligible rent under regulation 61 (calculation of weekly amounts).
- (2) In a case to which regulation 62 applies (rent free periods), any amount ineligible to be met by housing benefit which is specified in this Schedule as a weekly amount shall, where appropriate, be converted in accordance with sub-paragraph (1) and shall—
  - (a) where rent is payable weekly, or in multiples of a week, be multiplied by 52 or 53, whichever is appropriate, and divided by the number equal to the number of weeks in that 52 or 53 week period in respect of which he is liable to pay rent; or
  - (b) in any other case, be multiplied by 365 or 366, whichever is appropriate, and divided by the number of days in that 365 or 366 day period in respect of which he is liable to pay rent.

**8. In this Schedule—**

“communal areas” mean areas (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation;

“fuel” includes gas and electricity and a reference to a charge for fuel includes a charge for fuel which includes an amount in respect of the facility of providing it other than a specified amount for the provision of a heating system.

## SCHEDULE 2

Regulation 14

### Excluded tenancies

1. An excluded tenancy is any tenancy to which any of the following paragraphs applies.
- 2.—(1) Subject to sub-paragraphs (2) to (3), where a rent officer has made a determination, which relates to the tenancy in question or any other tenancy of the same dwelling this paragraph applies to—
  - (a) the tenancy in respect of which that determination was made; and
  - (b) any other tenancy of the same dwelling on terms which are substantially the same, other than the term relating to the amount of rent, as those terms were at the time of that determination or, if earlier, at the end of the tenancy.
- (2) For the purposes of any claim, notification, request or application under regulation 14(1) (“the later application”), a tenancy shall not be an excluded tenancy by virtue of sub-paragraph (1) by reference to a rent officer's determination made in consequence of an earlier claim, notification, request or application (“the earlier application”) where—
  - (a) the earlier and later applications were made in respect of the same claimant or different claimants; and
  - (b) the earlier application was made more than 52 weeks before the later application was made.
- (3) Sub-paragraph (1) shall not apply where subsequent to the making of the determination mentioned in that sub-paragraph—
  - (a) the number of occupiers of the dwelling has changed and that dwelling is not in a hostel;
  - (b) there has been a substantial change in the condition of the dwelling (including the making of improvements) or the terms of the tenancy other than a term relating to rent;
  - (c) there has been a rent increase under a term of the tenancy and the term under which that increase was made was either included in the tenancy at the time when the application for that determination was made (or was a term substantially the same as such a term) and

that determination was not made under paragraph 1(2), 2(2) or 3(3) of Schedule 1 to the Rent Officers Order;

- (d) in a case where the rent officer has made a determination under paragraph 2(2) of Schedule 1 to the Rent Officers Order (size and rent determinations), but since the date of the application for that determination—
  - (i) a child, who is a member of the household occupying the dwelling, has attained the age of 10 years; or
  - (ii) a young person, who is a member of the household occupying that dwelling, has attained the age of 16 years; or
  - (iii) there is a change in the composition of the household occupying the dwelling;
- (e) the claimant is a young individual, except in a case where the determination mentioned in sub-paragraph (1) was, or was made in conjunction with, a determination of a single room rent pursuant to paragraph 5 of Schedule 1 to the Rent Officers Order on or after 2nd July 2001.

**3.—**(1) This paragraph applies where the landlord is a registered housing association, except in a case where the local authority consider that—

- (a) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependants of his and any person paying rent to him); or
- (b) the rent payable for that dwelling is unreasonably high.

(2) Where the circumstances set out in head (a) or (b) of sub-paragraph (1) above exist, the authority shall so state in their application for a determination.

**4.** This paragraph applies to a tenancy entered into before—

- (a) in Scotland, 2nd January 1989; and
- (b) in any other case, 15th January 1989.

**5.** This paragraph applies to a regulated tenancy within the meaning of—

- (a) in Scotland, the Rent (Scotland) Act 1984<sup>(189)</sup>; and
- (b) in any other case, the Rent Act 1977<sup>(190)</sup>.

**6.** This paragraph applies to a housing association tenancy which—

- (a) in Scotland, is a tenancy to which Part 6 of the Rent (Scotland) Act 1984 applies; and
- (b) in any other case, is a housing association tenancy to which Part 6 of the Rent Act 1977 applies.

**7.** This paragraph applies to a protected occupancy or statutory tenancy within the meaning of the Rent (Agriculture) Act 1976<sup>(191)</sup>.

**8.** This paragraph applies to a tenancy at a low rent within the meaning of Part 1 of the Landlord and Tenant Act 1954<sup>(192)</sup> or Schedule 10 to the Local Government and Housing Act 1989<sup>(193)</sup>.

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<sup>(189)</sup>1984 c. 58.

<sup>(190)</sup>1977 c. 42.

<sup>(191)</sup>1976 c. 80.

<sup>(192)</sup>1954 c. 56.

<sup>(193)</sup>1989 c. 42.

**9.** This paragraph applies to a tenancy of any dwelling which is a bail hostel or probation hostel approved by the Secretary of State under section 9(1) of the Criminal Justice and Court Services Act 2000<sup>(194)</sup>.

**10.** This paragraph applies to a tenancy of a housing action trust established under Part 3 of the Housing Act 1988<sup>(195)</sup>.

**11.—**(1) Subject to sub-paragraphs (2) and (3) this paragraph applies to a tenancy—

- (a) in respect of a dwelling comprised in land which has been disposed of under section 32 of the Housing Act 1985<sup>(196)</sup> or section 12 of the Housing (Scotland) Act 1987<sup>(197)</sup>;
- (b) in respect of a dwelling comprised in land which has been disposed of with the consent required by section 43 of the Housing Act 1985<sup>(198)</sup> or section 12 of the Housing (Scotland) Act 1987;
- (c) in respect of which the fee simple estate has been acquired, under the right conferred by Chapter 2 of Part 1 of the Housing Act 1996<sup>(199)</sup>, otherwise than from a housing action trust within the meaning of Part 3 of that Act or in respect of which the house has been acquired under the right conferred by Part 3 of the Housing (Scotland) Act 1988; or
- (d) in respect of a dwelling disposed of under the New Towns (Transfer of Housing Stock) Regulations 1990<sup>(200)</sup> to a person who is an approved person for the purposes of disposal under those Regulations or in respect of a dwelling disposed of pursuant to powers contained in the New Towns (Scotland) Act 1968<sup>(201)</sup> to a housing association.

(2) This paragraph shall not apply to a tenancy to which sub-paragraph (1) refers if—

- (a) there has been an increase in rent since the disposal or acquisition, as the case may be, occurred; and
- (b) the local authority stated in the application for determination that—
  - (i) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependant of his and any person paying rent to him); or
  - (ii) the rent payable for that dwelling is unreasonably high.

(3) Where the disposal or acquisition, as the case may be, took place on or after 7th October 2002, sub-paragraph (2)(b) shall apply to a tenancy to which sub-paragraph (1) refers as if head (i) were omitted.

**12.** In this Schedule, “rent” shall be construed in accordance with paragraph (10) of regulation 14 (interpretation of “tenancy” and other expressions appropriate to a tenancy) and, subject to that sub-paragraph, has the same meaning—

- (a) in Scotland, as in section 25 of the Housing (Scotland) Act 1988<sup>(202)</sup>, except that the reference to the house in subsection (3) shall be construed as a reference to the dwelling;

<sup>(194)</sup> 2000 c. 43.

<sup>(195)</sup> 1988 c. 50.

<sup>(196)</sup> 1985 c. 68; section 32 was amended by section 140 of and Schedule 17 to the Housing Act 1988 (c. 50); section 227 of and Schedule 19 to the Housing Act 1996 (c. 52) and S.I. 1997/74.

<sup>(197)</sup> 1987 c. 26.

<sup>(198)</sup> 1985 c. 68; section 43 was amended by section 132 and 140 of and Schedule 17 to the Housing Act 1988 (c. 50); section 194 of and Schedule 12 to the Local Government and Housing Act 1989 (c. 42), section 78 of and Schedule 10 to the Environment Act 1995 (c. 25) and section 227 of and Schedule 9 to the Housing Act 1996.

<sup>(199)</sup> 1996 c. 52.

<sup>(200)</sup> S.I. 1990/1700; amended by S.I. 1990/2366 and 1991/1281.

<sup>(201)</sup> 1968 c. 16. Relevant amendments are contained in the Enterprise and New Towns (Scotland) Act 1990 (c. 35) section 33.

<sup>(202)</sup> 1988 c. 43; section 25 was amended by S.I. 1993/658.

- (b) in any other case, as in section 14 of the Housing Act 1988(203), except that the reference to the dwelling-house in subsection (4) shall be construed as a reference to the dwelling,
- (c) and—
- (i) other expressions have the same meaning as in regulation 14(10);
  - (ii) in the case of a determination by a rent officer pursuant to a request for such a determination under regulation 14(1)(e), any reference to a “tenancy” shall be taken as a reference to a prospective tenancy and any reference to an “occupier” or any person “occupying” a dwelling shall, in the case of such a determination, be taken to be a reference to a potential occupier or potential occupation of that dwelling.

## SCHEDULE 3

Regulation 22

## Applicable amounts

## PART 1

## Personal allowances

1. The amount specified in column (2) below in respect of each person or couple specified in column (1) shall be the amount specified for the purposes of regulation 22—

<i>Column (1)</i> <i>Person, couple or polygamous marriage</i>	<i>Column (2)</i> <i>Amount</i>
(1) Single claimant or lone parent—	(1)
(a) (a) aged under 65;	(a) (a) £109.45;
(b) (b) aged 65 or over.	(b) (b) £125.90.
(2) Couple—	(2)
(a) (a) both members aged under 65;	(a) (a) £167.05;
(b) (b) one member or both members aged 65 or over.	(b) (b) £188.60.
(3) If the claimant is a member of a polygamous marriage and none of the members of the marriage have attained the age of 65—	(3)
(a) (a) for the claimant and the other party to the marriage;	(a) (a) £167.05;
(b) (b) for each additional spouse who is a member of the same household as the claimant.	(b) (b) £57.60.
(4) If the claimant is a member of a polygamous marriage and one or more members of the marriage are aged 65 or over—	(4)

(203) 1988 c. 50; section 14 was amended by section 104 of and Schedule 8 to the Housing Act 1996 (c. 52) and S.I. 1993/651.

*Status: This is the original version (as it was originally made).*

<i>Column (1)</i>	<i>Column (2)</i>
<i>Person, couple or polygamous marriage</i>	<i>Amount</i>
(a) (a) for the claimant and the other party to the marriage;	(a) (a) £188.60;
(b) (b) for each additional spouse who is a member of the same household as the claimant.	(b) (b) £62.70.

2.—(1) The amounts specified in column (2) below in respect of each person specified in column (1) shall, for the relevant period specified in column (1), be the amounts specified for the purposes of regulation 22—

<i>Column (1)</i>	<i>Column (2)</i>
<i>Child or young person</i>	<i>Amount</i>
Person in respect of the period—	
(a) (a) beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday;	£43.88;
(b) (b) beginning on the first Monday in September following that person's 16th birthday and ending on the day preceding that person's nineteenth birthday.	£43.88.

(2) In column (1) of the Table above, “the first Monday in September” means the Monday which first occurs in the month of September in any year.

## PART 2

### Family premium

3.—(1) The amount for the purposes of regulations 22(1)(c) and (d) in respect of a family of which at least one member is a child or young person shall be £16.10.

(2) The amount specified in sub-paragraph (1) shall be increased by £10.50 where at least one child is under the age of one year and for the purposes of this sub-paragraph where that child's first birthday does not fall on a Monday he shall be treated as under the age of one year until the first Monday after his first birthday.

## PART 3

### Premiums

4. The premiums specified in Part 4 shall, for the purposes of regulation 22(1)(e), be applicable to a claimant who satisfies the condition specified in this Part in respect of that premium.



**5.—**(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit for—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979<sup>(204)</sup> applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and
- (b) any period spent by a person in undertaking a course of training or instruction provided or approved by the Secretary of State under section 2 of the 1973 Act<sup>(205)</sup>, or by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(206)</sup> or for any period during which he is in receipt of a training allowance.

(2) For the purposes of the carer premium under paragraph 9, a person shall be treated as being in receipt of a carer's allowance under section 70 of the Act<sup>(207)</sup> by virtue of sub-paragraph (1) (a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act.

### **Severe disability premium**

**6.—**(1) The condition is that the claimant is a severely disabled person.

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

- (a) in the case of a single claimant, lone parent or a claimant who is treated as having no partner in consequence of sub-paragraph (3)—
  - (i) he is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) subject to sub-paragraph (6), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing; and
  - (iii) no person is entitled to, and in receipt of, a carer's allowance in respect of caring for him;
- (b) in the case of a claimant who has a partner—
  - (i) the claimant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) his partner is also in receipt of such an allowance or, if the claimant is a member of a polygamous marriage, each other member of that marriage is in receipt of such an allowance; and
  - (iii) subject to sub-paragraph (6), the claimant has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing,

and either a person is entitled to and in receipt of a carer's allowance in respect of caring for only one of the couple or, if he is a member of a polygamous marriage, for one or more but not all the members of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any of the members of the marriage.

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<sup>(204)</sup> S.I. 1979/597; amending instruments are S.I. 1991/547, /1617, 1992/589, 1993/965, 1996/1803, 2000/799, 2003/136 and 2004/565.

<sup>(205)</sup> 1973 c. 50.

<sup>(206)</sup> 1990 c. 35.

<sup>(207)</sup> Section 70 was amended by S.I. 1994/2556 and 2000/1457.

(3) Where a claimant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of sub-paragraph (4), that partner shall be treated for the purposes of sub-paragraph (2) as if he were not a partner of the claimant.

(4) For the purposes of sub-paragraph (3), a person is blind if he is registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948(208) (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994(209).

(5) For the purposes of sub-paragraph (4), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(6) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account shall be taken of—

- (a) a person receiving attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; or
- (b) a person who is blind or is treated as blind within the meaning of sub-paragraphs (4) and (5).

(7) For the purposes of sub-paragraph (2)(b) a person shall be treated —

- (a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act, if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
- (b) as being entitled to and in receipt of a carer's allowance if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.

(8) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b)—

- (a) no account shall be taken of an award of a carer's allowance to the extent that payment of such an award is backdated for a period before the date on which the award is made; and
- (b) references to a person being in receipt of a carer's allowance shall include references to a person who would have been in receipt of that allowance but for the application of a restriction under section 7 of the Social Security Fraud Act 2001(210) (loss of benefit).

### Enhanced disability premium

7. The condition is that the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations under section 113(2) of the Act or but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of the Act in respect of a child or young person who is a member of the claimant's family.

(208) 1948 c. 29; section 29 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1(2); the Mental Health (Scotland) Act 1960 (c. 61), sections 113(1) and 114 of and Schedule 4; the Social Work (Scotland) Act 1968 (c. 49), section 95(2) and Schedule 9 Part 1; the Local Government Act 1972 (c. 70), sections 195(6), 272(1), Schedule 23 paragraph 2 and Schedule 30; the Employment and Training Act 1973 (c. 50), section 14(1) and Schedule 3 paragraph 3; the National Health Service Act 1977 (c. 49), section 129 and Schedule 15 paragraph 6; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 30 and Schedule 10 Part I; the Children Act 1989 (c. 41) section 108(5) and Schedule 13 paragraph 11(2); and the National Health Service and Community Care Act 1990 (c. 19), section 44(7).

(209) 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

(210) 2001 c. 11; section 7 was amended by the State Pension Credit Act 2002, section 14 and Schedule 2 and by the Tax Credits Act 2002, section 60 and Schedule 6.

### **Disabled child premium**

**8.** The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

- (a) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind within the meaning of paragraph 6(4) or is treated as blind in accordance with paragraph 6(5);
- (c) is a child or a young person in respect of whom section 145A of the Act<sup>(211)</sup> (entitlement to child benefit after death of child) applies for the purposes of entitlement to child benefit, but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the claimant's applicable amount immediately before the death of that child.

### **Carer premium**

**9.—(1)** The condition is that the claimant or his partner is, or both of them are, entitled to a carer's allowance.

(2) Where a carer premium has been awarded but—

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

this paragraph shall be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

(3) The relevant date for the purposes of sub-paragraph (2) is—

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

(4) For the purposes of this paragraph, a person shall be treated as being entitled to and in receipt of a carer's allowance for any period not covered by an award but in respect of which a payment is made in lieu of an award.

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

**10.** For the purpose of determining whether a premium is applicable to a person under paragraphs 6 to 9, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

### **Person in receipt of benefit**

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

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<sup>(211)</sup> Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c. 21); and amended by the Civil Partnership Act 2004 (c. 33), section 254 and Schedule 24, paragraph 48.

*Status: This is the original version (as it was originally made).*

## PART 4

### Amounts of premiums specified in Part 3

<i>Premium</i>	<i>Amount</i>
<b>12. —</b>	(1)
(1) Severe Disability Premium	
(a) (a) where the claimant satisfies the condition in paragraph 6(2)(a);	(a) (a) £45.50;
(b) (b) where the claimant satisfies the condition in paragraph 6(2)(b)—	
(i) in a case where there is someone in receipt of a carer's allowance or if he or any partner satisfies that condition only by virtue of paragraph 6(7);	(b) (i) £45.50;
(ii) in a case where there is no-one in receipt of such an allowance	(b) (ii) £91.00.
(2) Enhanced disability premium.	(2) £17.71 in respect of each child or young person in respect of whom the conditions specified in paragraph 7 are satisfied.
(3) Disabled child premium.	(3) £43.89 in respect of each child or young person in respect of whom the condition specified in paragraph 8 is satisfied.
(4) Carer premium.	(4) £25.80 in respect of each person who satisfies the condition specified in paragraph 9.

## SCHEDULE 4

Regulation 36(1)

### Sums disregarded from claimant's earnings

**1.** Where two or more of paragraphs 2 to 5 apply in any particular case the overall maximum sum which falls to be disregarded in that case under those paragraphs is restricted to—

- (a) £25 in the case of a lone parent;
- (b) £20 in any other case.

**2.** In a case where a claimant is a lone parent, £25 of earnings.

**3.—(1)** In a case of earnings from any employment or employments to which sub-paragraph (2) applies, £20.

(2) This paragraph applies to employment—

- (a) as a part-time fire-fighter employed by a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004(212) or a scheme to which section 4 of that Act applies;

(212)2004 c. 21.

- (b) as a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005(213)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;
  - (c) as an auxiliary coastguard in respect of coast rescue activities;
  - (d) in the manning or launching of a lifeboat if the employment is part-time;
  - (e) as a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to Social Security (Contributions) Regulations 2001(214).
- (3) If—
- (a) any of the earnings of the claimant or, if he has a partner, his partner, or both of them, are disregarded under sub-paragraph (1); and
  - (b) either of them has, or they both have, other earnings,
- so much of those other earnings as would not, in aggregate with the earnings disregarded under that sub-paragraph, exceed £20.
- 4.—(1) If the claimant or, if he has a partner, his partner is a carer, or both are carers, £20 of any earnings received from his or their employment.
- (2) Where the carer premium is awarded in respect of the claimant and of any partner of his, their earnings shall for the purposes of this paragraph be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) shall not exceed £20 of the aggregated amount.
- (3) In this paragraph the claimant or his partner is a carer if paragraph 9 of Part 3 of Schedule 3 (amount applicable for carers) is satisfied in respect of him.
- 5.—(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 Act(215);
    - (ii) severe disablement allowance under section 68 of the Act(216);
    - (iii) attendance allowance;
    - (iv) disability living allowance under sections 71 to 76 of the Act(217);
    - (v) any mobility supplement under article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(218) (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(219); or
    - (vi) the disability element or the severe disability element of working tax credit under Schedule 2 to the Working Tax Credit Regulations(220); or
  - (b) is or are registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948(221) (welfare services) or, in Scotland, has been certified

(213)2005 asp 5; paragraph 3(1)(c) applies in Scotland only— see footnote (a) above.

(214)S.I. 2001/1004.

(215)Section 30A was inserted by Social Security (Incapacity for Work) Act 1994 (c. 18) and amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 64 and the Civil Partnership Act 2004 (c. 33), section 254 and Schedule 24, paragraph 14.

(216)Saved by S.I. 2000/2958, article 4.

(217)Sections 71, 72 and 73 are amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 67.

(218)S.I. 1983/883; as amended by S.I. 1983/1116, /1521, 1986/592, 1990/1308, 1991/766, 1992/710, 1995/766, 1997/286, and 2001/409.

(219)S.I. 1983/686; amended by S.I. 1983/1164 and /1540 and 1986/628, 1990/1300, 1991/708, 1992/702, 1995/445, 1997/812 and 2001/420.

(220)Schedule 2 was substituted by S.I. 2005/681.

(221)1948 c. 29; section 29 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1(2); the Mental Health (Scotland) Act 1960 (c. 61), sections 113 and 114 and Schedule 4; the Social Work (Scotland) Act 1968 (c. 49),

as blind and in consequence is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994<sup>(222)</sup>; or

- (c) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the Act<sup>(223)</sup> (incapacity for work), and has been incapable, or has been treated as incapable, of work for a continuous period of not less than—

(i) in the case of a claimant who is terminally ill within the meaning of section 30B(4) of that Act<sup>(224)</sup>, 196 days;

(ii) in any other case, 364 days.

(2) Subject to sub-paragraph (3), £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 or his partner attains the qualifying age for state pension credit, had an award of housing benefit or council tax benefit 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) The disregard of £20 specified in sub-paragraph (2) applies so long as there is no break, other than a break which does not exceed 8 weeks, in a person's entitlement to housing benefit or council tax benefit or in employment following the first day in respect of which that benefit is awarded.

(4) £20 is the maximum amount which may be disregarded under this paragraph, notwithstanding that, where the claimant has a partner, both the claimant and his partner satisfy the requirements of this paragraph.

6. Any amount or the balance of any amount which would fall to be disregarded under paragraph 18 or 19 of Schedule 5 had the claimant's income which does not consist of earnings been sufficient to entitle him to the full disregard thereunder.

7. 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.

8. Any earnings, other than earnings referred to in regulation 33(8)(b) (copyright, patent or trade mark), derived from employment which ended before the day in respect of which the claimant first satisfies the conditions for entitlement to housing benefit.

9.—(1) In a case where the claimant is a person who satisfies at least one of the conditions set out in sub-paragraph (2), and his net earnings equal or exceed the total of the amounts set out in sub-paragraph (3), the amount of his earnings that falls to be disregarded under this Schedule shall be increased by £14.50.

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section 95(2) and Schedule 9, Part I; the Local Government Act 1972 (c. 70), sections 195(6), 272(1), Schedule 23 paragraph 2 and Schedule 30; the Employment and Training Act 1973 (c. 50), section 14(1) and Schedule 3 paragraph 3; the National Health Service Act 1977 (c. 49), section 129 and Schedule 15 paragraph 6; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 30 and Schedule 10 Part I; the Children Act 1989 (c. 41) section 108(5) and Schedule 13 paragraph 11(2) and the National Health Service and Community Care Act 1990 (c. 19), section 44(7).

(222) 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

(223) Part 12A was inserted by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 5 and amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 61 and by the Social Security Act 1998 (c. 14), section 86(1) and Schedule 7, paragraphs 75 and 76.

(224) Section 30B was inserted by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 2. and amended by the Pensions Act 1995 (c. 26), section 126 and Schedule 4, paragraph 18; the Welfare Reform and Pensions Act 1999 (c. 30), section 70 and Schedule 8, paragraph 22; the Tax Credits Act 2002 (c. 21), section 60, Schedule 6; and the Civil Partnership Act 2004 (c. 33) section 254 and Schedule 24, paragraph 13.

- (2) The conditions of this sub-paragraph are that—
- (a) the claimant, or if he has a partner, either the claimant or his partner, is a person to whom regulation 20(1)(c) of the Working Tax Credit Regulations applies; or
  - (b) the claimant—
    - (i) is, or any partner of his is, aged at least 25 and is engaged in remunerative work for on average not less than 30 hours per week; or
    - (ii) if he is a member of a couple—
      - (aa) at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week; and
      - (bb) his applicable amount includes a family premium under paragraph 3 of Schedule 3; or
    - (iii) is a lone parent who is engaged in remunerative work for on average not less than 16 hours per week; or
    - (iv) is, or if he has a partner, one of them is, engaged in remunerative work for on average not less than 16 hours per week, and paragraph 5(1) above is satisfied in respect of that person; or
  - (c) the claimant is, or, if he has a partner, one of them is, a person to whom regulation 18(3) of the Working Tax Credit Regulations(225) (eligibility for 50 plus element) applies, or would apply if an application for working tax credit were to be made in his case.
- (3) The following are the amounts referred to in sub-paragraph (1)—
- (a) any amount disregarded under this Schedule;
  - (b) the amount of child care charges calculated as deductible under regulation 31(1)(c) (treatment of child care charges); and
  - (c) £14.50.
- (4) The provisions of regulation 6 (remunerative work) shall apply in determining whether or not a person works for on average not less than 30 hours per week, but as if the reference to 16 hours in paragraph (1) of that regulation was a reference to 30 hours.
- 10.** Where a payment of earnings is made in a currency other than Sterling any banking charge or commission payable in converting that payment into Sterling.

## SCHEDULE 5

Regulation 33(9)

### 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 2 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;
  - (c) a pension payable to a person as a widow, widower or surviving civil partner under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(226) insofar as that Order is made under the Naval and Marine Pay and Pensions

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(225) Amended by S.I. 2003/3815.

(226) S.I. 1983/883



Act 1865(227) or the Pensions and Yeomanry Pay Act 1884(228), or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(229) and any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;

- (d) a guaranteed income payment;
- (e) a payment made to compensate for the non-payment of such a pension or payment as is mentioned in any of the preceding sub-paragraphs;
- (f) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in sub-paragraphs (a) to (d) above;
- (g) 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 article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(230) (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983 (231) or any payment intended to compensate for the non-payment of such a supplement.

4. Any supplementary pension under article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(232) (pensions to widows, widowers or surviving civil partners).

5. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983(233) (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

6.—(1) Any payment which is—

- (a) made under any of the Dispensing Instruments to a 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
- (b) equal to the amount specified in article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows, widowers or surviving civil partners).

(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).

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(227) 1865 c. 73.

(228) 47 & 48 Vict. c. 55.

(229) 1977 c. 5.

(230) S.I. 1983/883; article 26A was added by S.I. 1983/1116 and amended by S.I. 1983/1116, 1983/1521, 1986/592, 1990/1308, 1991/766, 1992/710, 1995/766, 1997/286, and 2001/409.

(231) S.I. 1983/686; by amended by S.I. 1983/1164 and 1540 and 1986/628, 1990/1300, 1991/708, 1992/702, 1995/445, 1997/812 and 2001/420.

(232) S.I. 1983/883; the relevant amending Instruments are S.I. 1993/598, 1994/1906, 2002/792 and 2005/1471.

(233) S.I. 1983/686; the relevant amending Instruments are S.I. 1994/715 and 1994/2021.



7. £15 of any widowed parent's allowance to which the claimant is entitled under section 39A of the Act **(234)**.

8. £15 of any widowed mother's allowance to which the claimant is entitled under section 37 of the Act **(235)**.

9. 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, 100 per cent. of such payments; or
- (b) where the aggregate of any such payments exceeds £20, £20 and 50 per cent. of the excess over £20.

10. 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.

11. 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 per cent. of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in this paragraph referred to as “the annuitants”) who include the person to whom the loan was made;
- (b) that 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,

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

- (i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988 **(236)** (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;

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**(234)** Section 39A was inserted by section 55 of the Welfare Reform and Pensions Act 1999 (c. 30) and amended by section 47 of and Schedule 3 to the Tax Credits Act 2002 (c. 21) and sections 254(1) and 261(4) of and Schedules 24 and 30 to the Civil Partnership Act 2004 (c. 33).

**(235)** Section 37 was amended by section 47 of and Schedule 3 to the Tax Credits Act 2002 (c. 21), section 254(1) of and Schedule 24 to the Civil Partnership Act 2004 (c. 33) and section 1(3) of and Schedule 1 to the Child Benefit Act 2005 (c. 6).

**(236)** 1988 c. 1; subsection (1A) was inserted by the Finance Act 1994 (c. 9).

- (ii) in any other case, the interest which is payable on the loan without deduction of such a sum.

**12.—**(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 to the State Pension Credit Regulations 2002<sup>(237)</sup>.

(3) In a case to which sub-paragraph (2) applies, £20 or—

- (a) if the payment is less than £20, the whole payment;
- (b) if, in the claimant's case, £10 is disregarded in accordance with paragraph 1(a) to (g), £10 or the whole payment if it is less than £10; or
- (c) if, in the claimant's case, £15 is disregarded under paragraph 7 or paragraph 8 and—
  - (i) he has no disregard under paragraph 1(a) to (g), £5 or the whole payment if it is less than £5;
  - (ii) he has a disregard under paragraph 1(a) to (g), nil.

(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 these Regulations less any deductions in respect of non-dependants which fall to be made under regulation 55 (non-dependant deductions).

**13.** Any increase in pension under Part 4 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983<sup>(238)</sup> paid in respect of a dependent other than the pensioner's spouse or civil partner.

**14.** 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 the person or a child of the person to or in respect of whom the payments are made.

**15.** Periodic payments made to the claimant or the claimant's partner under an agreement entered into in settlement of a claim made by the claimant or, as the case may be, the claimant's partner for an injury suffered by him.

**16.** 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.

**17.** Any banking charges or commission payable in converting to Sterling payments of income made in a currency other than Sterling.

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

<sup>(237)</sup>S.I. 2002/1792; the relevant amending instruments are S.I. 2002/3019, and 2002/3197 and S.I. 2003/1195 and 2003/2274, 2004/2327 and 2000/2825 and 2005/522.

<sup>(238)</sup>S.I. 1983/883.

- (a) under, or pursuant to regulations made under powers conferred, by section 1 or 2 of the Education Act 1962(239), or section 22 of the Teaching and Higher Education Act 1998(240), that student's award;
- (b) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980(241), that student's bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section; or
- (c) the student's student loan,

an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

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

- (a) is not in receipt of any award, grant or student loan in respect of that education; or
- (b) is in receipt of an award under section 2 of the Education Act 1962 (discretionary awards) or an award bestowed by virtue of the Teaching and Higher Education Act 1998, or regulations made thereunder, or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980(242), or a payment under section 73 of that Act of 1980,

and the claimant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 18, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

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

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

whichever is less.

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

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

**21.** Except in a case which falls under paragraph 9 of Schedule 4, where the claimant is a person who satisfies the conditions of sub-paragraph (2) of that paragraph, any amount of working tax credit up to £14.50.

**22.** Except in the case of income from capital specified in Part 2 of Schedule 6, any actual income from capital.

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

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(239) 1962 c. 12, section 1 was amended by the Education Act 1996 (c. 56), Schedule 37, paragraph 4.

(240) 1998 c. 30.

(241) 1980 c. 44.

(242) 1980 c. 44.

*Status: This is the original version (as it was originally made).*

- (a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865<sup>(243)</sup>;
- (b) the Royal Warrant dated 19th February 1990 amending the Schedule to the Army Pensions Warrant 1977;
- (c) the Queen's Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917<sup>(244)</sup>;
- (d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980<sup>(245)</sup>;
- (e) the Orders dated 19th February 1990 amending Orders made on 12th December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980;

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

**24.** Where the total value of any capital specified in Part 2 of Schedule 6 does not exceed—

- (a) in the case of a claimant residing permanently in accommodation to which regulation 29(6) applies, £10,000; or
- (b) in any other case, £6,000,

any income actually derived from such capital.

## SCHEDULE 6

Regulation 44(2)

### Capital to be disregarded

## PART 1

### Capital to be disregarded generally

**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.

**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—

<sup>(243)</sup>1865 c. 73.

<sup>(244)</sup>1917 c. 51, Queen's Regulations for the Royal Air Force are available from HMSO.

<sup>(245)</sup>1980 c. 9.

- (a) by a person who is a relative of the claimant or of his partner as his home where that person is either aged 60 or over or 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 or with whom he had formed a civil partnership that has been dissolved.

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. Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from his former partner or the dissolution of a 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.

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.

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.

10. 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,

for a period of 26 weeks from the date on which the claim for housing benefit is made or, if it is unreasonable to expect him to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so engaged or re-engaged.

11. The surrender value of any policy of life insurance.

12. 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.

13. 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 internment of—

- (a) the claimant;
- (b) the claimant’s partner;
- (c) the claimant’s deceased spouse or deceased civil partner; or
- (d) the claimant’s partner’s deceased spouse or deceased civil partner,

by the Japanese during the Second World War, an amount equal to that payment.

*Status: This is the original version (as it was originally made).*

**14.—**(1) Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a claimant's partner who is—

- (a) a diagnosed person;
- (b) a diagnosed person's partner or was a diagnosed person's partner at the time of the diagnosed person's death;
- (c) 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 a trust payment is made to—

- (a) 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 payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph 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 who is—

- (a) the diagnosed person;
- (b) a diagnosed person's partner or was a diagnosed person's partner at the date of the diagnosed person's death; or
- (c) 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.

(4) Where a payment such as referred to in sub-paragraph (3) is made to—

- (a) 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 that person dies;
- (b) 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.

(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 residing in a care home or an independent hospital.

(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 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 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.

**15.** 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 or civil partner or the claimant's partner's deceased spouse or civil partner—

- (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,

during the Second World War.

**16.—(1) Any payment made under—**

- (a) the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund (collectively referred to in this paragraph as “the Trusts”); or
- (b) the Independent Living Funds.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the Trusts 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 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.

(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 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 any of the Trusts and which is made to or for the benefit of the person who is suffering from haemophilia or who is a qualifying person.

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

- (a) that person has no partner or former partner from whom he is not estranged or divorced 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
- (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 any of the Trusts, 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 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.

**17.—**(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.

(2) Where the whole or part of the payment is administered—

- (a) by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998<sup>(246)</sup>, or the Court of Protection;
- (b) in accordance with an order under Rule 36.14 of the Ordinary Cause Rules 1993<sup>(247)</sup> 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,

the whole of the amount so administered.

**18.** Any amount specified in paragraphs 19, 20 or 21 for a period of one year beginning with the date of receipt.

**19.** 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.

**20.** 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.

**21.—**(1) Subject to paragraph 22 any amount paid—

- (a) by way of arrears of benefit;
- (b) by way of compensation for the late payment of benefit;
- (c) in lieu of the payment of benefit;
- (d) to rectify, or compensate for, an official error, as defined for the purposes of paragraph 22, being an amount to which that paragraph does not apply;
- (e) by a local authority (including, in relation to England, a county council), or by the National Assembly for Wales, 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.

(2) In sub-paragraph (1), “benefit” means—

- (a) attendance allowance under section 64 of the Act;
- (b) disability living allowance;
- (c) income support;
- (d) income-based jobseeker's allowance;
- (e) state pension credit;
- (f) housing benefit;

<sup>(246)</sup>[S.I. 1998/3132](#).

<sup>(247)</sup>First Schedule 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](#).



- (g) council tax benefit;
- (h) child tax credit;
- (i) an increase of a disablement pension under section 104 of the Act (increase where constant attendance is needed), and any further increase of such a pension under section 105 of the Act (increase for exceptionally severe disablement);
- (j) any amount included on account of the claimant's exceptionally severe disablement or need for constant attendance in a war disablement pension or a war widow's or widower's pension.

**22.**—(1) Subject to sub-paragraph (3), any payment of £5,000 or more 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 or the Housing Benefit Regulations 2006.

(2) Subject to sub-paragraph (3), the total amount of any payments disregarded under—

- (a) paragraph 7(2) of Schedule 10 to the Income Support Regulations<sup>(248)</sup>;
- (b) paragraph 12(2) of Schedule 8 to the Jobseeker's Allowance Regulations<sup>(249)</sup>;
- (c) paragraph 9(2) of Schedule 5 to the Housing Benefit Regulations 2006;
- (d) paragraph 20A of Schedule 5 to the State Pension Credit Regulations 2002<sup>(250)</sup>,

where the award in respect of which the payments last fell to be disregarded under those Regulations 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 benefit under these Regulations during which the relevant sum or, where it is paid in more than one instalment, the first instalment of that sum is received; and
- (b) where that award is followed by one or more further awards which, or each of which, begins immediately after the previous award ends, such further awards until the end of the last such 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 or council tax benefit, has the meaning given by regulation 1(2) of the Decisions and Appeals Regulations<sup>(251)</sup>;
- (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<sup>(252)</sup>;

“the relevant date” means—

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<sup>(248)</sup> Paragraph 7(2) was inserted by [S.I. 2002/2380](#).

<sup>(249)</sup> Paragraph 12(2) was inserted by [S.I. 2002/2380](#).

<sup>(250)</sup> [S.I. 2002/1792](#). Paragraph 20A was inserted by [S.I. 2002/3197](#), and substituted by [S.I. 2003/2274](#).

<sup>(251)</sup> [S.I. 2001/1002](#). Regulation 1(2) was amended by [S.I. 2002/1379](#) and [2002/1703](#).

<sup>(252)</sup> [S.I. 1999/991](#). Regulation 1(3) was amended by [S.I. 2002/1379](#).

*Status: This is the original version (as it was originally made).*

- (a) in the case of an existing award of benefit under these Regulations or the Housing Benefit Regulations 2006, 6th October 2003; and
- (b) in any other case, the date on which the claim for benefit under these Regulations or the Housing Benefit Regulations 2006 was made;

“relevant benefit” means any benefit specified in paragraph 21(2); and

“the relevant sum” means the payment referred to in sub-paragraph (1) or the total amount referred to in sub-paragraph (2).

**23.** Where a capital asset is held in a currency other than Sterling, any banking charge or commission payable in converting that capital into Sterling.

**24.** The value of the right to receive income from an occupational pension scheme or a personal pension scheme.

**25.** The value of a right to receive income under a retirement annuity contract.

**26.** The dwelling occupied as the home; but only one dwelling shall be disregarded under this paragraph.

## PART 2

Capital disregarded only for the purposes of determining deemed income

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

**28.** 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.

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

**30.** Where property is held under a trust, other than—

- (a) a charitable trust within the meaning of the Charities Act 1993(253); 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 7

Regulation 53

Extended payments (severe disablement allowance and incapacity benefit) of housing benefit

### **Condition for an extended payment (severe disablement allowance and incapacity benefit)**

- 1.** The condition prescribed in this paragraph is that the claimant or the claimant’s partner—
  - (a) notifies either the designated office or an appropriate DWP office that he or his partner—
    - (i) has commenced, or is about to commence, remunerative work;
    - (ii) has commenced, or is about to commence, receiving remuneration for work or an increased amount of remuneration for work; or

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(253)1993 c. 10.

- (iii) has commenced, or is about to commence, an increased number of hours of work, so that entitlement to severe disablement allowance or incapacity benefit ceases and that work, or as the case may be, remuneration, is expected to last 5 weeks or more; and
- (b) the notification is made no later than 4 weeks after the day on which the claimant or his partner first undertakes the remunerative work referred to in sub-paragraph (a)(i), first receives remuneration for the work or an increased amount of remuneration for the work referred to in sub-paragraph (a)(ii), or first commences the increased number of hours of work referred to in sub-paragraph (a)(iii).

### **Calculation and payment of an extended payment (severe disablement allowance and incapacity benefit)**

2.—(1) Subject to the following provisions of this paragraph and except in the case of a mover, the amount of the extended payment (severe disablement allowance and incapacity benefit) shall be equal to the amount of housing benefit which was payable to the claimant for the last benefit week before he ceased to be entitled to housing benefit.

(2) In a case where the last benefit week referred to in sub-paragraph (1) fell, in whole or in part, within a rent free period, the last benefit week for the purposes of that sub-paragraph shall be taken to be the last benefit week that did not fall within a rent free period.

(3) Where the last benefit week before he ceased to be entitled to housing benefit was a week in which the claimant's eligible rent was calculated in accordance with regulation 61(4)(c) (claimant ceases to occupy the dwelling as his home), sub-paragraph (1) shall have effect as if the reference to the last benefit week before he ceased to be entitled to housing benefit was a reference to the week before that week.

(4) Subject to paragraph (5), the extended payment (severe disablement allowance and incapacity benefit) shall be payable for each of the weeks in the period specified in regulation 53(6)(a), and shall be paid at such time and in such manner as is appropriate, having regard to—

- (a) the times at which and the frequency with which a person's liability to make payment of rent arises; and
- (b) the reasonable needs and convenience of the person entitled thereto.

(5) No extended payment (severe disablement allowance and incapacity benefit) shall be payable for a week which is a rent free period for the purposes of regulation 62(1) (rent free periods).

### **Movers**

3. Paragraphs 4 to 6 below apply to movers from—

- (a) the day the move takes place where that day is a Monday; or
- (b) from the Monday following the day the move takes place where that day is not a Monday.

### **Movers and rent allowances.**

4.—(1) Subject to sub-paragraph (2), in the case of a mover whose housing benefit was in the form of a rent allowance, the authority which, prior to the mover ceasing to be entitled to housing benefit, was paying that allowance, shall make an extended payment (severe disablement allowance and incapacity benefit) to that mover calculated on the same basis as in paragraph 2, and, for these purposes, the mover shall be treated as continuing to occupy and be liable to make payments in respect of the dwelling he was occupying as his home immediately before he ceased to be entitled to housing benefit.

(2) Notwithstanding sub-paragraph (1), in a case where that mover's liability to make payments in respect of the second dwelling would be to a housing authority, any extended payment (severe disablement allowance and incapacity benefit) shall be made by that housing authority and shall be determined as provided in paragraph 6(b).

### **Movers and rent rebates**

5. Where, in the case of a mover—

- (a) his housing benefit was in the form of a rent rebate; and
- (b) he claims an extended payment (severe disablement allowance and incapacity benefit),

the authority in which the second dwelling is situated, or as the case may be, where the mover's liability to make payments in respect of the second dwelling is to a housing authority, that housing authority, shall upon receiving the mover's claim for an extended payment (severe disablement allowance and incapacity benefit), which meets the requirements of regulation 53(1), make an extended payment (severe disablement allowance and incapacity benefit), calculated in accordance with paragraph 6, to that mover.

### **Movers and extended payments (severe disablement allowance and incapacity benefit)**

6. In a case to which paragraph 4(2) or 5 applies and where a mover's liability referred to in that paragraph is—

- (a) other than to a housing authority, the extended payment (severe disablement allowance and incapacity benefit) shall be a payment by way of rent allowance calculated in accordance with paragraph 2;
- (b) to a housing authority, the extended payment (severe disablement allowance and incapacity benefit) shall be by way of a rent rebate to the value of the lesser of—
  - (i) such part of the rent in respect of the period specified in regulation 53(6)(a) as is eligible for housing benefit, calculated in accordance with regulations 11 to 13, less, in a case where the rebate to which paragraph 5 refers, or the rent allowance to which paragraph 4 refers, as the case may be, was subject to any deductions in respect of non-dependants pursuant to regulations 50 and 55, the amount of those deductions; or
  - (ii) the amount of extended payment (severe disablement allowance and incapacity benefit) calculated in accordance with paragraph 2.

### **Maximum housing benefit**

7. The maximum housing benefit of a mover the amount of whose extended payment (severe disablement allowance and incapacity benefit) is calculated in accordance with paragraph 6(b)(i) shall be calculated in accordance with regulation 50, save that no deduction shall be made in respect of non-dependants, other than any that fall to be taken into account pursuant to paragraph 6(b)(i).

### **Movers with two homes**

8. Subject to paragraph 9, any extended payment (severe disablement allowance and incapacity benefit) shall be without prejudice to any entitlement the claimant may have pursuant to regulation 7(6) (liability to make payments in respect of two homes).

### **Adjustment of entitlement in respect of an extended payment (severe disablement allowance and incapacity benefit)**

**9.** Where for any week—

- (a) a person is entitled to an extended payment (severe disablement allowance and incapacity benefit); and
- (b) he also claims and is awarded housing benefit,

then the amount of the housing benefit payable in respect of that week shall be reduced by a sum equal to the amount of the extended payment (severe disablement allowance and incapacity benefit) and only the balance, if any, shall be payable to him for that week.

### **Interpretation**

**10.** In this Schedule—

“claimant” means a person claiming an extended payment (severe disablement allowance and incapacity benefit);

“mover” means a claimant who changes the dwelling which he occupies as his home in respect of which he is liable or treated as liable to make payments;

“second dwelling” means the dwelling to which a person has moved, or is about to move, which he is or will be occupying as his new home, and where the liability to make payments of rent in respect of his dwelling follows on immediately from the liability to make payments of rent in respect of his previous dwelling.

## **SCHEDULE 8**

Regulation 71

### **Matters to be included in decision notice**

## **PART 1**

### **General**

**1.** The statement of matters to be included in any decision notice issued by a relevant authority to a person, and referred to in regulation 71 (notification of decisions) and in regulation 10 of the Decisions and Appeals Regulations are those matters set out in the following provisions of this Schedule.

**2.** Every decision notice shall include a statement as to the right of any person affected by that decision to request a written statement under regulation 71(2) (requests for statement of reasons) and the manner and time in which to do so.

**3.** Every decision notice shall include a statement as to the right of any person affected by that decision to make an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations<sup>(254)</sup> and, where appropriate, to appeal against that decision and the manner and time in which to do so.

**4.** Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall include a statement as to whether

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<sup>(254)</sup>Regulation 4(1)(a) was amended by [S.I. 2002/1379](#).

the original decision in respect of which the person made his representations has been confirmed or revised and where the relevant authority has not revised the decision the reasons why not.

5. Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall, if the original decision has been revised, include a statement as to the right of any person affected by that decision to apply for a revision in accordance with regulation 4(1)(a) of those Regulations and the manner and time in which to do so.

6. An authority may include in the decision notice any other matters not prescribed by this Schedule which it sees fit, whether expressly or by reference to some other document available without charge to the person.

7. Parts 2, 3 and 6 of this Schedule shall apply only to the decision notice given on a claim.

8. Where a decision notice is given following a revision of an earlier decision—

- (a) made of the authority's own motion which results in a revision of that earlier decision; or
- (b) made following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations, whether or not resulting in a revision of that earlier decision,

that notice shall, subject to paragraph 6, contain a statement only as to all the matters revised.

## PART 2

### Awards where state pension credit is payable

9.—(1) Where a person on state pension credit is awarded housing benefit, the decision notice shall include a statement as to—

- (a) his weekly eligible rent, if any; and
- (b) the amount and an explanation of any deduction made under paragraph 6(2) or (3) of Schedule 1 (fuel deductions), if any, and that the deduction may be varied if he provides to the authority evidence on which it may estimate the actual or approximate amount of that service charge; and
- (c) the amount of and the category of non-dependant deductions made under regulation 55 (non-dependant deductions), if any; and
- (d) the normal weekly amount of rent allowance, or rent rebate as the case may be, to which he is entitled; and
- (e) in the case of a rent allowance and a rate rebate paid as if it were a rent allowance, the day of payment, and the period in respect of which payment of that allowance is to be made; and
- (f) the first day of entitlement to an allowance or rebate; and
- (g) his duty to notify any change of circumstances which might affect his entitlement to, or the amount of, housing benefit and (without prejudice to the extent of the duty owed under regulation 69 (duty to notify changes of circumstances)) the kind of change of circumstances which is to be notified, either upon the notice or by reference to some other document available to him on application and without charge.

(2) In a case where a person on state pension credit has entitlement only to the savings credit, the following additional matters shall also be set out—

- (a) the applicable amount and the basis of calculation;
- (b) the amount of the savings credit and any child tax credit or child benefit taken into account;

- (c) the amount of the person's income and capital as notified to the local authority by the Secretary of State and taken into account for the purposes of the housing benefit assessment;
- (d) any modification of the claimant's income or capital made in accordance with regulation 27 (calculation of claimant's income in savings credit only cases); and
- (e) the amount of the claimant's capital if paragraph (7) of regulation 27 applies in his case.

### PART 3

#### Awards where no state pension credit is payable

**10.** Where a person is not on state pension credit but is awarded housing benefit, the decision notice shall include a statement as to—

- (a) the matters set out in paragraph 9; and
- (b) his applicable amount and how it is calculated; and
- (c) his weekly earnings; and
- (d) his weekly income other than earnings.

### PART 4

#### Awards where direct payments made to landlords

**11.** Where a decision has been made under regulation 76 or 77 (circumstances in which payment is to be made, or may be made, direct to a landlord), the decision notice shall include a statement—

- (a) as to the amount of housing benefit which is to be paid direct to the landlord and the date from which it is to be paid; and
- (b) informing the landlord of the duty imposed upon him to notify the local authority of—
  - (i) any change in circumstances which might affect the claimant's entitlement to housing benefit, or the amount of housing benefit payable in his case; and
  - (ii) the kind of change of circumstances which is to be notified,and the notice shall be sent both to the claimant and to the landlord; and
- (c) informing both landlords and claimants that where a payment of housing benefit is recoverable from a landlord and the recovery is made from housing benefit payable to the landlord to discharge (in whole or in part) an obligation owed to him by a claimant, then, in a case where that claimant is not the person on whose behalf the recoverable amount was paid, that obligation shall nonetheless be taken to be discharged by the amount so recovered.

**12.** In this Schedule, "landlord" has the same meaning as in regulation 76.

### PART 5

#### Notice where income of non-dependant is treated as claimant's

**13.** Where an authority makes a decision under regulation 24 (circumstances in which income of non-dependant is to be treated as claimant's) the decision notice shall contain a statement as to—

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- (a) the fact that a decision has been made by reference to the income and capital of the claimant's non-dependant; and
- (b) the relevant authority's reasons for making that decision.

## PART 6

### Notice where no award is made

#### 14. Where a person is not awarded housing benefit—

- (a) either on grounds of income or because the amount of any housing benefit is less than the minimum housing benefit prescribed by regulation 56, the decision notice shall include a statement as to—
  - (i) the matters set out in paragraphs 9(1)(a) to (c), and in a case where the amount of entitlement is less than the minimum amount of housing benefit prescribed, paragraph 9(1)(d) also; and
  - (ii) the matters set out in paragraphs 10(b) to (d) where the person is not on income support or an income-based jobseeker's allowance; and
  - (iii) where the amount of entitlement is less than the minimum amount of housing benefit prescribed, that fact and that such entitlement is not payable;
- (b) for any reason other than one mentioned in sub-paragraph (a), the decision notice shall include a statement as to the reason why no award has been made.

## PART 7

### Notice where recoverable overpayment

**15.—(1)** Where the appropriate authority makes a decision that there is a recoverable overpayment within the meaning of regulation 81 (recoverable overpayments), the decision notice shall include a statement as to—

- (a) the fact that there is a recoverable overpayment; and
- (b) the reason why there is a recoverable overpayment; and
- (c) the amount of the recoverable overpayment; and
- (d) how the amount of the recoverable overpayment was calculated; and
- (e) the benefit weeks to which the recoverable overpayment relates; and
- (f) where recovery of the recoverable overpayment is to be made by deduction from a rent allowance or rebate, as the case may be, that fact and the amount of the deduction.

#### (2) In a case where it is—

- (a) determined that there is a recoverable overpayment;
- (b) determined that that overpayment is recoverable from a landlord; and
- (c) decided that recovery of that overpayment is to be made by deduction from a rent allowance paid to that landlord to discharge (in whole or in part) an obligation owed to him by a claimant ("claimant A"), not being the claimant on whose behalf the recoverable amount was paid,

the decision notice sent to that landlord shall identify both—

- (i) the person on whose behalf the recoverable amount was paid to that landlord; and



(ii) claimant A.

## SCHEDULE 9

Regulation 103

### Pathfinder authorities

## PART 1

### Commencement date in relation to each pathfinder authority

<i>Pathfinder authority</i>	<i>Commencement date</i>
Argyll and Bute	30th May 2005
Blackpool	17th November 2003
Brighton and Hove	2nd February 2004
Conwy	9th February 2004
Coventry	12th January 2004
East Riding of Yorkshire	18th April 2005
Edinburgh	9th February 2004
Guildford	4th July 2005
Leeds	9th February 2004
Lewisham	1st December 2003
North East Lincolnshire	9th February 2004
Norwich	13th June 2005
Pembrokeshire	20th June 2005
St Helens	23rd May 2005
Salford	25th July 2005
South Norfolk	6th June 2005
Teignbridge	12th January 2004
Wandsworth	11th April 2005

## PART 2

### Application of the Regulations

1. These Regulations shall apply to pathfinder authorities subject to the provisions of this Part of this Schedule.

2. In regulation 2(1) (interpretation), at the appropriate places, insert—

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““amended determination” means a determination made in accordance with article 7A of the Rent Officers Order(255);

“broad rental market area” has the meaning specified in paragraph 4 of Part 1 of Schedule 3A to the Rent Officers Order(256);

“broad rental market area determination” means a determination made in accordance with article 4B(1) of the Rent Officers Order(257);

“commencement date” means in relation to a pathfinder authority specified in Part 1 of Schedule 9, the date specified in that Part in relation to that authority;

“local housing allowance” means an allowance determined in accordance with paragraph 2 or 3 of Part 1 of Schedule 3A to the Rent Officers Order;

“local housing allowance determination” means a determination made in accordance with article 4B(2) of the Rent Officers Order;

“maximum rent (standard local rate)” means the amount determined in accordance with regulation 13A;

“pathfinder authority” means a relevant authority specified in Part 1 of Schedule 9;

“relevant date” means, as the case may require—

- (a) the commencement date in relation to a pathfinder authority specified in Part 1 of Schedule 9;
- (b) the date of the claim to which the claim or relevant information relates;
- (c) the date of the change relating to a rent allowance, or the change which affects the category of dwelling, date of death or rent increase, to which a notification referred to in regulation 13A(1)(b)(iii) or (iv) relate; or
- (d) the date on which the period mentioned in regulation 14(1)(f) or (g) has elapsed;”.

### **Amendment of regulation 11**

3. In regulation 11(1) (eligible housing costs), for the words “regulations 12(3),” to the end of the paragraph substitute “regulations 12 and 13 or regulations 12 and 13A, whichever is applicable in his case.”.

### **Insertion of regulation 11A**

4. After regulation 11 (eligible housing costs), insert the following regulation—

#### **“Cases where maximum housing benefit expires**

**11A.** A maximum housing benefit shall not have effect for any benefit week which begins on or after the day which is the first anniversary of the day by reference to which the local housing allowance most recently applicable for the purpose of determining that maximum housing benefit in accordance with regulation 12A(1) to (9) was identified.”.

### **Amendment of regulation 12**

5. In regulation 12(3)(b), after the words “except where sub-paragraph (a)”, insert “or regulation 12A(1), (3) or (4)”.

(255) Article 7A was inserted by [S.I. 2000/1](#) and amended by [S.I. 2003/2398](#).

(256) Schedule 3A was inserted by [S.I. 2003/2395](#).

(257) Article 4B was inserted by [S.I. 2003/2395](#).

## Insert regulation 12A

6. After regulation 12 (rent), insert the following regulation—

### **“Eligible rent and the maximum rent (standard local rate)**

**12A.—**(1) Where, by virtue of paragraph (1) of regulation 13A, a maximum rent (standard local rate) has been, or falls to be, determined in accordance with that regulation, then, except where paragraph (3)(a)(ii), (b)(ii) or (c)(ii), (4)(a) or (6)(a) applies—

- (a) the amount of a person’s eligible rent shall be the maximum rent (standard local rate); and
- (b) it shall apply until the earlier of—
  - (i) the determination of a maximum rent (standard local rate) by virtue of regulation 13A(1)(b)(iv); or
  - (ii) the determination of a maximum rent (standard local rate) which relates to the local housing allowance applicable to the case on the first anniversary of the day by reference to which the local housing allowance which was applicable for the purpose of determining the eligible rent in sub-paragraph (a), was identified.

(2) This paragraph applies where a pathfinder authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13A(1)(a) or (b)(i), (ii) or (iii) (aa) or (c) and the claimant has been continuously entitled to and in receipt of housing benefit in respect of the dwelling he occupies as his home for a period which includes the commencement date.

(3) Where paragraph (2) applies, subject to paragraph (9)—

- (a) except where sub-paragraph (b) or (c) applies, the amount of a person’s eligible rent shall be—
  - (i) the eligible rent determined in accordance with paragraph (1) where that is not less than the eligible rent which applied on the day before the relevant date; or
  - (ii) the eligible rent which applied on the day before the relevant date;
- (b) where the eligible rent to which the person was entitled on the day before the relevant date was determined by reference to a maximum rent determined in accordance with regulation 13(11)(b), the person’s eligible rent shall be—
  - (i) the eligible rent determined in accordance with paragraph (1), where that is not less than the eligible rent which applied on the day before the relevant date; or
  - (ii) the eligible rent which applied on the day before the relevant date; or
- (c) where the eligible rent to which the person was entitled on the day before the relevant date was, by virtue of regulation 13(14), determined in accordance with regulation 12(3)(b), the person’s eligible rent shall be—
  - (i) the eligible rent determined in accordance with paragraph (1), where that is not less than the eligible rent which applied on the day before the relevant date; or
  - (ii) the eligible rent which applied on the day before the relevant date.

(4) Subject to paragraph (9), where the pathfinder authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13A(1)(b)(i), (ii) or (iv)(aa) to (cc) and the claimant occupies a dwelling which is the same as that occupied by him at

the date of death of any person to whom any of sub-paragraphs (b) to (d) of paragraph (8) applied or, had a claim been made, would have applied, the eligible rent shall be—

- (a) either—
  - (i) the eligible rent which applied on the day before the death occurred; or
  - (ii) in a case where there was no eligible rent, subject to regulation 12(4) and (7), the reckonable rent due on that day; or
- (b) the eligible rent determined in accordance with paragraph (1), where it is not less than the eligible rent determined in accordance with sub-paragraph (a).

(5) For the purpose of paragraph (4), a claimant shall be treated as occupying the dwelling if paragraph (13) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) is satisfied and for that purpose that paragraph (13) shall have effect as if sub-paragraph (b) of that paragraph were omitted.

(6) Subject to paragraphs (7) and (9), where a pathfinder authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13A(1)(b)(i) or (ii) and the pathfinder authority is satisfied that a person to whom paragraph (8) applies was able to meet the financial commitments for his dwelling when they were entered into, the eligible rent shall be—

- (a) an eligible rent determined in accordance with regulation 12(3)(b); or
- (b) the eligible rent determined in accordance with paragraph (1), where it is not less than the eligible rent referred to in sub-paragraph (a).

(7) Paragraph (6) shall not apply in the case of any claim for housing benefit where the claimant was previously entitled to housing benefit in respect of any period which ended less than 52 weeks before the commencement of the period to which the claim relates.

(8) This paragraph applies to the following persons—

- (a) the claimant;
- (b) any member of his family;
- (c) if the claimant is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household;
- (d) any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him, except for a relative who has a separate right of occupation of the dwelling which would enable them to continue to occupy it even if the claimant ceased his occupation of it.

(9) Where a person's eligible rent has been determined in accordance with—

- (a) paragraph (3)(a)(ii), it shall continue to apply until such time as the pathfinder authority determines an eligible rent—
  - (i) in accordance with paragraph (1) which is equal to or exceeds it or is based on a maximum rent (standard local rate) determined by virtue of regulation 13A(1)(b)(iv)(dd); or
  - (ii) where the maximum rent (standard local rate) on which it is based relates to the local housing allowance applicable to the case on the anniversary of the day by reference to which the local housing allowance which was applicable for the purpose of determining the eligible rent in paragraph (3)(a)(i) was identified, which is equal to or exceeds it,

whichever first occurs;

- (b) paragraph (3)(b)(ii), and—

- (i) the pathfinder authority determined a maximum rent (standard local rate) following receipt of a notification of change relating to a rent allowance that falls within paragraph 2(3)(a) of Schedule 2 as a result of the death of one of the occupiers to whom any of sub-paragraphs (b) to (d) of regulation 13(16) applied, it shall continue to apply until—
  - (aa) the period of 12 months from the date of death has expired; or
  - (bb) the pathfinder authority determines an eligible rent in accordance with paragraph (1) which is equal to or exceeds it or is based on a maximum rent (standard local rate) determined by virtue of regulation 13A(1)(b)(iv)(dd),whichever first occurs; or
- (ii) in any other case, it shall continue to apply until—
  - (aa) the date on which the eligible rent which applied on the day before the relevant date would have ceased to apply; or
  - (bb) the pathfinder authority determines an eligible rent in accordance with paragraph (1) which is equal to or exceeds it or is based on a maximum rent (standard local rate) determined by virtue of regulation 13A(1)(b)(iv)(dd),whichever first occurs;
- (c) paragraph (3)(c)(ii), it shall continue to apply until—
  - (i) the date on which the eligible rent which applied on the day before the relevant date would have ceased to apply; or
  - (ii) the pathfinder authority determines an eligible rent in accordance with paragraph (1) which is equal to or exceeds it or is based on a maximum rent (standard local rate) determined by virtue of regulation 13A(1)(b)(iv)(dd),whichever first occurs;
- (d) paragraph (4)(a), it shall continue to apply until—
  - (i) the period of 12 months from the date of death has expired; or
  - (ii) the pathfinder authority determines an eligible rent in accordance with paragraph (1) which is equal to or exceeds it or is based on a maximum rent (standard local rate) determined by virtue of regulation 13A(1)(b)(iv)(dd),whichever first occurs;
- (e) paragraph (6)(a), it shall continue to apply until—
  - (i) the first 13 weeks of the claimant's award of housing benefit have expired; or
  - (ii) the pathfinder authority determines an eligible rent in accordance with paragraph (1) which is equal to or exceeds it or is based on a maximum rent (standard local rate) determined by virtue of regulation 13A(1)(b)(iv)(dd),whichever first occurs; and
- (f) paragraph (1)(b)(ii), or sub-paragraph (a)(ii) or this sub-paragraph, that eligible rent ("the earlier eligible rent") shall continue to apply until—
  - (i) the determination of a maximum rent (standard local rate) by virtue of regulation 13A(1)(b)(iv); or
  - (ii) the determination of an eligible rent where the maximum rent (standard local rate) on which it is based relates to the local housing allowance

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applicable to the case on the first anniversary of the day by reference to which the local housing allowance which was applicable for the purpose of determining the earlier eligible rent was identified,

whichever first occurs.

(10) Where an eligible rent ceases to apply by virtue of sub-paragraph (b)(i)(aa), (b)(ii)(aa), (c)(i), (d)(i) or (e)(i) of paragraph (9), the eligible rent that shall apply instead shall be the one which would have applied but for paragraphs (3)(b)(ii), (3)(c)(ii), (4)(a) and (6)(a).

(11) In paragraph (4) “reckonable rent” has the same meaning as in regulation 13.”.

### **Insertion of regulation 13A and 13B**

7. After regulation 13 (maximum rent) insert the following regulations—

#### **“Maximum rent (standard local rate)**

**13A.**—(1) Subject to paragraph (2), where—

- (a) the relevant authority is a pathfinder authority specified in Part 1 of Schedule 9 and it is the commencement date for that pathfinder authority; or
- (b) a pathfinder authority has received—
  - (i) a claim on which a rent allowance may be awarded, where the date of claim falls on or after the commencement date;
  - (ii) relevant information regarding a claim on which a rent allowance may be awarded, where the date of claim falls on or after the commencement date;
  - (iii) in relation to an award of housing benefit where the maximum rent was determined in accordance with regulation 13—
    - (aa) a notification of a change relating to a rent allowance where the change occurs on or after the commencement date; or
    - (bb) a notification of a change of dwelling where the change occurs on or after 9th April 2004; or
  - (iv) in relation to an award of housing benefit where a maximum rent (standard local rate) was determined in accordance with this regulation—
    - (aa) notification of a change of a kind which affects the category of dwelling applicable to the claim;
    - (bb) notification of the death of an occupier of the dwelling to whom any of sub-paragraphs (b) to (d) of regulation 12A(8) applies, where the notification does not fall within sub-head (aa);
    - (cc) notification that there has been a rent increase under a term of the tenancy to which the claim relates and the term under which that increase was made was either included in the tenancy at the date of the claim or is a term substantially the same as such a term; or
    - (dd) notification of a change of dwelling; or
- (c) a pathfinder authority is required to apply to a rent officer for a determination in accordance with regulation 14(1)(f) or (g),

the pathfinder authority shall determine a maximum rent (standard local rate) in accordance with paragraphs (3) to (8).

(2) Paragraph (1) shall not apply in a case where—

- (a) the landlord is a registered social landlord;

- (b) paragraph 4(1)(b) of Schedule 3 to the Consequential Provisions Regulations applies;
  - (c) the tenancy is an excluded tenancy of a type falling within any of paragraphs 4 to 10 of Schedule 2;
  - (d) the claim or award relates to—
    - (i) periodical payments of a kind falling within regulation 12(1) which a person is liable to make in relation to a houseboat, caravan or mobile home which he occupies as his home; or
    - (ii) rent payable in relation to a hostel; or
  - (e) rent under the tenancy is attributable to board and attendance, and—
    - (i) the pathfinder authority has made an application to the rent officer in accordance with paragraph (6), regulation 15 or 17; and
    - (ii) the rent officer has determined that a substantial part of the rent under the tenancy is fairly attributable to board and attendance and has notified the pathfinder authority of this in accordance with article 4C, 4D or 4E of the Rent Officers Order(258).
- (3) The maximum rent (standard local rate) shall be the local housing allowance determined by the rent officer which is applicable to—
- (a) the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date; and
  - (b) the category of dwelling—
    - (i) specified in paragraph 1(1)(a) of Part 1 of Schedule 3A to the Rent Officers Order where—
      - (aa) the claimant is a young individual who has no non-dependant residing with him and to whom paragraph 6 of Schedule 3 (severe disability premium) does not apply; or
      - (bb) the category of dwelling specified in paragraph 1(1)(b) of Part 1 of Schedule 3A to the Rent Officers Order would apply in the claimant's case but neither requirement in head (ii)(aa) or (bb) is satisfied in his case;
    - (ii) specified in paragraph 1(1)(b) of Part 1 of Schedule 3A to the Rent Officers Order where that applies in the claimant's case at the relevant date in accordance with the size criteria and he is not a person to whom head (i) (aa) applies and where—
      - (aa) the claimant (together with his partner where he has one) has the exclusive use of two or more rooms; or
      - (bb) the claimant (together with his partner where he has one) has the exclusive use of one room, a bathroom and toilet and a kitchen or facilities for cooking;
    - (iii) in any other case, which applies in the claimant's case at the relevant date in accordance with the size criteria.
- (4) Where no local housing allowance applicable to a claim or award of housing benefit falling within paragraph (3)(b)(iii) has been determined, the pathfinder authority shall—

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(258) S.I. 1997/1984 and 1995. Relevant amending Instruments to S.I. 1997/1984 are S.I. 2000/1 and 2003/2398; relevant amending Instruments to S.I. 1997/1995 are S.I. 2000/3 and 2003/2398.

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- (a) apply to the rent officer for local housing allowance determinations for the category of dwelling applicable to the claim or award of housing benefit for each broad rental market area falling within its area, in whole or in part, at the relevant date, which shall be specified in the application; and
  - (b) apply the local housing allowance so determined for the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date.
- (5) Where—
- (a) a pathfinder authority receives a request on a properly completed form approved for the purpose by the pathfinder authority from a person stating that he is contemplating occupying as his home a dwelling containing a specified number of rooms, exceeding six, within the area of the pathfinder authority and that, if he does so, he is likely to claim housing benefit; and
  - (b) no local housing allowance determination is in effect for a broad rental market area, falling within, in whole or in part, the area of the pathfinder authority for the category of dwelling containing the number of rooms specified in the form,
- the pathfinder authority shall apply to the rent officer for local housing allowance determinations for each broad rental market area for the category of dwelling containing the number of rooms specified in the form.
- (6) In a case where—
- (a) the pathfinder authority is required to determine a maximum rent (standard local rate) by virtue of paragraph (1); and
  - (b) part of the rent under the tenancy appears to the pathfinder authority to be likely to be attributable to board and attendance,
- the pathfinder authority shall apply to the rent officer for a board and attendance determination to be made in accordance with article 4C of the Rent Officers Order.
- (7) Where an application to a rent officer is required in accordance with paragraph (6)—
- (a) it shall contain—
    - (i) a statement that the application is made in accordance with paragraph (6); and
    - (ii) such other statements, information and notifications as would be required were the application to be made in accordance with regulation 14(1); and
  - (b) it shall be made within the same period following the day on which the pathfinder authority becomes obliged to determine a maximum rent (standard local rate) by virtue of paragraph (1) as would be required if it were to be made under regulation 14(1).
- (8) Where the maximum rent (standard local rate) exceeds the rent, the claimant shall be treated as liable to make payments in respect of the dwelling of an amount equal to the amount by which the maximum rent (standard local rate) exceeds the rent, except for the purposes of calculating any amount by which a rent allowance exceeds the amount which a claimant is liable to pay his landlord as rent, or rent and any arrears of rent, in accordance with regulation 76(2A).
- (9) In this regulation—
- “change of dwelling” has the same meaning as in regulation 14;
  - “change relating to a rent allowance” has the same meaning as in regulation 14;



“occupiers” means the persons whom the pathfinder authority is satisfied occupy as their home the dwelling to which the claim or award relates except for any joint tenant who is not a member of the claimant’s household;

“registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996<sup>(259)</sup> and, in Scotland, sections 57 and 59 of the Housing (Scotland) Act 2001<sup>(260)</sup>;

“room” has the meaning specified in paragraph 1(2) of Part 1 of Schedule 3A to the Rent Officers Order;

“size criteria” has the meaning specified in article 2 of the Rent Officers Order except that the word “occupier” is to be construed in accordance with the definition of “occupiers” in this paragraph.

### **Publication of local housing allowances**

**13B.** A pathfinder authority shall take such steps as appear to it to be appropriate for the purpose of securing that information in relation to broad rental market areas falling in whole or in part within its area, and local housing allowances applicable to such broad rental market areas, is brought to the attention of persons who may be entitled to housing benefit from the authority.”.

### **Amendment of regulation 14**

**8.** In regulation 14 (requirement to refer to rent officers) after paragraph (5), insert the following paragraphs—

“(5A) An application shall not be required under paragraph (1)(a), (b), (c), (d) or (e) where the claim, relevant information, notification or request is received by a pathfinder authority, unless it is—

- (a) a claim, relevant information or notification to which any of the circumstances specified in regulation 13A(2)(a) to (e) apply; or
- (b) a request, and any of the circumstances in regulation 13A(2)(a) to (d) would apply were a claim to be made by the prospective occupier in relation to the dwelling which is the subject of the request,

and a referral would fall to be made were the claim, relevant information, notification or request made to a relevant authority which is not a pathfinder authority.

(5B) An application shall not be required in accordance with paragraph (1)(f) or (g) unless—

- (a) it is a case to which regulation 13A(2) applies; and
- (b) a referral would fall to be made were the relevant authority not a pathfinder authority.”.

### **Amendment of regulation 15**

**9.** In regulation 15(1)(a) (applications to the rent officers for redeterminations) after the words “reference made under” insert “regulation 13A(6) or”.

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<sup>(259)</sup>1996 c. 52.

<sup>(260)</sup>2001 asp 10.

**Amendment of regulation 16**

**10.** In regulation 16 (application for redetermination by rent officer)—

- (a) in paragraph (1)(b) after the words “the Housing Act functions” insert the words “except for functions relating to broad rental market area determinations and local housing allowance determinations or amended determinations”;
- (b) in paragraphs (3) and (4)(b) after the words “application under regulation” insert the words “13A(6) or”;
- (c) in paragraph (5) after the words “the Housing Act functions” insert the words “(except for those relating to broad rental market area determinations and local housing allowance determinations or amended determinations)”.

**Amendment of regulation 17**

**11.** In regulation 17 (substitute determinations or substitute redeterminations)—

- (a) in paragraph (1)(b)—
  - (i) for the words “article 7A” substitute the words “article 7A(1) or (2)”;
  - (ii) for the words “or substitute redetermination” substitute “, substitute redetermination, substitute board and attendance determination or substitute board and attendance redetermination”;
- (b) in paragraph (2) for the words “or substitute redetermination” substitute “, substitute redetermination, board and attendance redetermination, substitute board and attendance determination or substitute board and attendance redetermination”.

**Insertion of regulation 18A**

**12.** After regulation 18 (application of provisions to substitute determinations or substitute redeterminations) insert the following regulation—

**“Amended determinations**

**18A.** Where a decision has been revised in consequence of an amended broad rental market area determination or amended local housing allowance determination by a rent officer and that amended determination has led to—

- (a) a reduction in the maximum rent (standard local rate) applicable to a claimant, the amended determination shall be a change of circumstances in relation to that claimant; and
- (b) an increase in the maximum rent (standard local rate) applicable to a claimant, the amended determination shall have effect in place of the original determination.”.

**Amendment of regulations 76 and 77**

**13.—(1)** In regulation 76 (circumstances in which payment is to be made to a landlord) after paragraph (2) insert the following paragraph—

“(2A) In a case where—

- (a) a pathfinder authority has determined a maximum rent (standard local rate) in accordance with regulation 13A(1); and
- (b) the rent allowance exceeds the amount which the claimant is liable to pay his landlord by way of rent,

any payment of rent allowance made to a landlord pursuant to this regulation or to regulation 77 may include all or part of any amount by which the rent allowance exceeds the amount which the claimant is liable to pay his landlord as rent but shall not include any amount by which the rent allowance exceeds the amount which the claimant is liable to pay his landlord as rent and arrears of rent.”.

- (2) In regulation 77 (circumstances in which payment may be made to a landlord)—
- (a) in paragraph (1) for the words “paragraph (3)” substitute the words “paragraphs (3) and (3A)”;
  - (b) in sub-paragraph (a) of paragraph (3) after the words “paragraph (1)” insert the words “or (3A)”;
  - (c) after paragraph (3) insert the following paragraph—
    - “(3A) In a case where a pathfinder authority has determined a maximum rent (standard local rate) in accordance with regulation 13A—
    - (a) sub-paragraphs (a) and (b) of paragraph (1) shall not apply; and
    - (b) payment of a rent allowance to a person’s landlord may be made where—
      - (i) the eligible rent was determined by reference to a maximum rent (standard local rate) which was determined by virtue of regulation 13A(1)(a) and—
        - (aa) the maximum rent (standard local rate) was determined less than six months previously;
        - (bb) no subsequent maximum rent (standard local rate) has been determined in accordance with regulation 13A(1); and
        - (cc) the claimant has, since the date the maximum rent (standard local rate) was determined, been continuously entitled to, and in receipt of, housing benefit in relation to the dwelling he occupied as his home at that date;
      - (ii) the pathfinder authority considers that the claimant is likely to have difficulty in managing his affairs;
      - (iii) the pathfinder authority considers that it is improbable that the claimant will pay his rent; or
      - (iv) a direct payment has previously been made by the pathfinder authority to the landlord in accordance with regulation 76 in respect of the current award of housing benefit.”.

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## EXPLANATORY NOTE

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

These Regulations consolidate existing provisions relating to housing benefit for claimants who have attained the qualifying age for state pension credit. In the case of a woman that age is pensionable age and in the case of a man it is the age which is pensionable age in the case of a woman born on the same day as the man (section 1(6) of the State Pension Credit Act 2002). These Regulations do not however apply if either the claimant or the claimants partner in receipt of income support or an

income-based jobseeker's allowance, notwithstanding that the claimant has attained the qualifying age for state pension credit. Provisions relating to those claimants and others who have not attained the qualifying age for state pension credit are contained in the Housing Benefit Regulations 2006.

Part 1 of the Regulations contains general provisions relevant to these Regulations. The Regulations consolidated by these Regulations are revoked, in consequence of the consolidation, by the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 ("the Consequential Provisions Regulations"). These Regulations are to be read, where appropriate, with the Consequential Provisions Regulations.

Part 2 makes provision in regard to the circumstances in which a person is or is not to be treated as occupying a dwelling as his home and is or is not to be treated as liable to make payments for a dwelling.

Part 3 specifies those payments by way of rent which are to be eligible for the payment of housing benefit and for determinations and redeterminations by rent officers in rent allowance cases.

Part 4 specifies the circumstances in which a person is or is not to be treated as responsible for another person and who is to be treated as a member of the same household as a claimant for housing benefit.

Part 5 provides for the calculation of the applicable amount in respect of a person's entitlement to housing benefit, by reference to which the amount of his benefit is calculated (regulation 22 and Schedule 3).

Part 6 contains provisions enabling the income and capital of a person to whom these Regulations apply to be determined. They provide in particular—

- that a person entitled to a guarantee credit in state pension credit is to be treated as having neither income nor capital;
- that a person whose entitlement to state pension credit is restricted to the savings credit will have his income calculated by reference to the assessment made by the Secretary of State for the purpose of determining the award of state pension credit. This figure is subject to certain adjustments the determining authority is required to make under regulation 27;
- that persons to whom the Regulations apply but who have no entitlement to state pension credit are to have their income and capital determined in accordance with regulations 29 to 49.

Part 7 provides for the appropriate maximum housing benefit and also includes provisions about non-dependant deductions, the housing benefit taper and extended payments (severe disablement allowance and incapacity benefit).

Part 8 contains provisions as to when housing benefit is to begin together with provisions relating to change of circumstances and the date those changes take effect.

Part 9 provides for the making, amendment and withdrawal of claims, the evidence and information required in connection with claims and the duty to notify changes of circumstances.

Part 10 provides for the determination of questions arising on claims and the notification of decisions by authorities.

Part 11 provides for the payment of housing benefit including to whom payments are to be made and the withholding of benefit.

Part 12 provides for the recovery of overpaid housing benefit, what constitutes a recoverable overpayment and the method of recovery.

Part 13 provides for the collection, recording and holding of information. It also provides for the supply of information between local authorities.

Part 14 provides for the housing benefit scheme to be modified in the area of Pathfinder authorities; Part 1 of Schedule 9 identifies those local authorities which operate the Pathfinder provisions in their area and Part 2 of that Schedule specifies the modifications which apply in their area.

