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STATUTORY RULES OF NORTHERN IRELAND

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**2004 No. 8**

**HOUSING**

**Housing Renewal Grants (Reduction of  
Grant) Regulations (Northern Ireland) 2004**

*Made - - - - 9th January 2004*

*Coming into operation 16th February 2004*

The Department for Social Development<sup>(1)</sup>, in exercise of the powers conferred by Article 47<sup>(2)</sup> of the Housing (Northern Ireland) Order 1992<sup>(3)</sup> as applied by Regulations<sup>(4)</sup> made under Article 73 of that Order and now exercisable by it<sup>(5)</sup> and conferred on it by Articles 61, 62<sup>(5)</sup> and 148(1) of the Housing (Northern Ireland) Order 2003<sup>(6)</sup>, and of every other power enabling it in that behalf, hereby makes the following Regulations:

**PART 1**

**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Housing Renewal Grants (Reduction of Grant) Regulations (Northern Ireland) 2004 and shall come into operation on 16th February 2004.

**Interpretation**

2.—(1) In these Regulations –

“adoption leave” means a period of absence from work on ordinary or additional adoption leave under Article 107A or 107B of the Employment Rights (Northern Ireland) Order 1996<sup>(7)</sup>;

“application” means an application within Article 61 or 62 of the Order or, as the case may be, Article 73 of the Housing (Northern Ireland) Order 1992;

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(1) S.I. 1999/283 (N.I. 1) Article 3(1)

(2) See Article 120(5) of S.I. 2003/412 (N.I. 2)

(3) S.I. 1992/1725 (N.I. 15)

(4) S.R. 2003 No. 465

(5) S.R. 1999 No. 481 Article 6(e) and Schedule 4 Part V

(6) S.I. 2003/412 (N.I. 2)

(7) S.I. 1996/1919 (N.I. 16); Articles 107A and 107B were inserted by Article 3 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

“assessment period” means such period as is prescribed in regulations 21 to 23 over which income falls to be determined;

“attendance allowance” means –

- (a) an attendance allowance under section 64 of the 1992 Act<sup>(8)</sup>;
- (b) an increase of disablement pension under section 104 or 105 of that Act;
- (c) a payment under regulations made in exercise of the power conferred by paragraph 4(2)(b) of Schedule 8 to that Act;
- (d) a payment analogous to a payment by way of an increase of an allowance payable in respect of constant attendance under paragraph 4 of Schedule 8 to the Social Security Contributions and Benefits Act 1992<sup>(9)</sup>;
- (e) a payment by virtue of Article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983<sup>(10)</sup> or any analogous payment;
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

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

“carer’s allowance” means a carer’s allowance under section 70<sup>(11)</sup> of the 1992 Act;

“charity” has the meaning given by section 35 of the Charities Act (Northern Ireland) 1964<sup>(12)</sup>, and “charitable body” shall be construed accordingly;

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

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

“child tax credit” means a child tax credit under section 8 of the Tax Credits Act 2002<sup>(13)</sup>;

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

“concessionary payment” means a payment made under arrangements made by the Department for Social Development, with the consent of the Department of Finance and Personnel, which is charged either to the Northern Ireland National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the 1992 Act are charged;

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

“Crown Estate Commissioners” have the same meaning as in the Interpretation Act 1978<sup>(14)</sup>;

“disability living allowance” means a disability living allowance under section 71 of the 1992 Act;

“earnings” has the meaning assigned by regulation 25 or, as the case may be, 27;

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(8) Section 64 was amended by Article 63(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 ([S.I. 1999/3147 \(N.I. 11\)](#))

(9) 1992 c. 4

(10) [S.I. 1983/686](#); the relevant amending instruments are [S.I. 1984/1675](#) and [S.I. 2001/420](#)

(11) Section 70 was amended by Article 2(a)(iii) and Article 3 of the Deregulation (Carer’s Allowance) Order (Northern Ireland) 2002 ([S.R. 2002 No. 321](#))

(12) 1964 c. 33 ([N.I.](#)); to which there are amendments not relevant to these Regulations

(13) 2002 c. 21

(14) 1978 c. 30

“education and library board” means an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986(15);

“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 Social Security for the benefit of persons eligible for payment in accordance with its provisions;

“employed earner” means a person who is gainfully employed in Northern Ireland or the Republic of Ireland either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E or, as the case may be, chargeable under the legislation of the Republic of Ireland which is analogous to income tax under Schedule E, and also includes a person who is in receipt of a payment which is payable under any statutory provision having effect in Great Britain and which corresponds to statutory sick pay or statutory maternity pay(16);

“family” means –

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

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

“guarantee credit” shall be construed in accordance with sections 1 and 2 of the State Pension Credit Act (Northern Ireland) 2002(17);

“Health and Social Services Board” means a Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(18);

“higher rate” where it relates to rates of tax means any rate of income tax determined in pursuance of section 1(2)(b) of the Income and Corporation Taxes Act 1988(19);

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

“incapacity benefit” means short-term incapacity benefit or long-term incapacity benefit under section 30A of the 1992 Act(20) (incapacity benefit: entitlement);

“income-based jobseeker’s allowance” and “a joint claim jobseeker’s allowance” have the same meaning as they have in Article 3(4) of the Jobseekers (Northern Ireland) Order 1995(21);

“income-related benefit” means any benefit to which section 122(1) of the 1992 Act refers;

“income support” means income support under Part VII of the 1992 Act;

“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;

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(15) S.I. 1986/594 (N.I. 3); to which there are amendments not relevant to these Regulations

(16) See the Social Security Contributions and Benefits Act 1992 (c. 4), Parts XI and XII

(17) 2002 c. 14 (N.I.)

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

(19) 1988 c. 1; section 1(2)(b) was substituted by section 24(2)(a) of the Finance Act 1988 (c. 39) and amended by Article 2(2)(b) of the Income Tax (Indexation) Order 1993 (S.I. 1993/755)

(20) Section 30A was inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(21) S.I. 1995/2705 (N.I. 15); the definition of “a joint claim jobseeker’s allowance” was inserted by paragraph 3(4) of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

“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;

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

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

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations (Northern Ireland) 1996<sup>(22)</sup>;

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

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

“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988 by virtue of section 832(1) of that Act<sup>(23)</sup>;

“the Macfarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State for Social Security to the Haemophilia Society, for the relief of poverty or distress among those 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 Social Security for the benefit of certain persons suffering from haemophilia and other beneficiaries;

“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 Social Security for the benefit of certain persons suffering from haemophilia;

“married couple”, except in regulation 11(2)(b), paragraph 12(b) of Schedule 2, paragraph 4(b) of Schedule 3 and paragraph 6(b) of Schedule 4, has the meaning assigned to it by section 133 of the 1992 Act;

“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 IX of the Employment Rights (Northern Ireland) Order 1996<sup>(24)</sup>;

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

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

“net earnings” means such earnings as are determined in accordance with regulation 26;

“net profit” means such profit as is determined in accordance with regulation 28;

“the New Deal Options” means the employment programmes specified in regulation 75(1)(a)(i) of the Jobseeker’s Allowance Regulations and the training scheme specified in regulation 75(1)(b)(ii) of those Regulations;

“non-dependant” has the meaning assigned by regulation 7;

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(22) S.R. 1996 No. 198; the relevant amending regulations are S.R. 1997 No. 541, S.R. 1998 No. 182, S.R. 1998 No. 198, S.R. 1998 No. 541, S.R. 1999 No. 467, S.R. 2000 No. 197 and S.R. 2001 No. 151

(23) 1988 c. 1; the definition of “lower rate” was inserted by section 9(9) of the Finance Act 1992 (c. 20)

(24) S.I. 1996/1919 (N.I. 16); to which there are amendments not relevant to these Regulations

“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;

“the Order” means the Housing (Northern Ireland) Order 2003;

“partner” means –

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

“parental leave” means maternity leave, paternity leave or adoption leave;

“paternity leave” means a period of absence from work on leave under Article 112A or 112B of the Employment Rights (Northern Ireland) Order 1996(25);

“payment” includes part of a payment;

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

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes (Northern Ireland) Act 1993(26) and, in the case of a self-employed earner, includes a scheme approved by the Board of Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988(27);

“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;

“Preparation for Employment Programme” means the programme known by that name as defined for the purposes of the Jobseeker’s Allowance Regulations in regulation 75(i)(a) (v)(28) of those Regulations;

“Preparation for Employment Programme for 50 plus” means the programme known by that name as defined for the purposes of the Jobseeker’s Allowance Regulations in regulation 1(2)(29) of those Regulations;

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

“rates” has the same meaning as in the Rates (Northern Ireland) Order 1977(30);

“relevant person” has the meaning assigned by regulation 6;

“remunerative work” has the meaning assigned by regulation 8;

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

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(25) Articles 112A and 112B were inserted by Article 4 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

(26) 1993 c. 49

(27) 1988 c. 1

(28) Head (v) was inserted by S.R. 2001 No. 151

(29) The definition of the “Preparation for Employment Programme for 50 plus” was inserted by S.R. 2001 No. 151

(30) S.I. 1977/2157 (N.I. 28); as amended by Article 3(2) of the Rates (Amendment) (Northern Ireland) Order 1983 (S.I. 1983/421 (N.I. 7))

“self-employed earner” means a person who is gainfully employed in Northern Ireland or the Republic of Ireland otherwise than in employed earner’s employment (whether or not he is also employed in such employment);

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

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

“social fund payment” means a payment under section 134 of the 1992 Act;

“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993(31) out of sums allocated to it for distribution under that section;

“state pension credit” has the same meaning as in the State Pension Credit Act (Northern Ireland) 2002(32);

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

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

“student” has the meaning assigned by regulation 42;

“the 1992 Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(33);

“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 Department for Employment and Learning;
- (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, a government department or approved by such department in relation to him or so provided or approved by or on behalf of the Department for Employment and Learning,

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 provided under section 1(1) of the Employment and Training Act (Northern Ireland) 1950(34) or is training as a teacher;

“unmarried couple” means, except in regulation 11(2)(b), paragraph 12(b) of Schedule 2, paragraph 4(b) of Schedule 3 and paragraph 6(b) of Schedule 4, two persons who are living together as if they were husband and wife;

“voluntary organisation” means any association carrying on any activities otherwise than for the purpose of gain by the association or by individual members;

“war disablement pension” has the meaning assigned by section 146(2) of the 1992 Act;

“war widow’s pension” has the meaning assigned by section 146(2) of the 1992 Act;

“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(35), the Personal Injuries (Emergency Provisions) Act 1939(36), the Pensions (Navy,

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(31) 1993 c. 39

(32) See section 1(1) of the State Pension Credit Act (Northern Ireland) 2002

(33) 1992 c. 7

(34) 1950 c. 29 (N.I.); section 1(1) was substituted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

(35) 1917 c. 51

(36) 1939 c. 82



Army, Air Force and Mercantile Marine) Act 1939<sup>(37)</sup>, the Polish Resettlement Act 1947<sup>(38)</sup> or Part 7 or section 151 of the Reserve Forces Act 1980<sup>(39)</sup>;

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act 2002.

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

“young person” means a person, not being a person who is in receipt of income support or income-based jobseeker’s allowance or a person who is receiving advanced education within the meaning of regulation 12(2) of the Income Support (General) Regulations (Northern Ireland) 1987<sup>(40)</sup> (relevant education), aged 16 or over but under 19 who is treated as a child for the purposes of section 138 of the 1992 Act (meaning of child).

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

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

(a) in respect of which he satisfies the conditions for entitlement to an income-based jobseeker’s allowance but where the allowance is not paid in accordance with Article 21 of the Jobseekers (Northern Ireland) Order 1995<sup>(41)</sup> (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 Order and which falls immediately before a day in respect of which an income-based jobseeker’s allowance is payable to him but for Article 21 of that Order.

### **Persons from abroad**

3. No grant shall be payable under Part III of the Order if the applicant, or any of the applicants, or any person who is not an applicant but is entitled to make an application and lives or intends to live in the dwelling or, as the case may be, a flat in the building, is a person from abroad within the meaning of regulation 7A of the Housing Benefit (General) Regulations (Northern Ireland) 1987<sup>(42)</sup> (persons from abroad).

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

4. In the case of any application to which Article 62 of the Order (determination of amount of grant in case of landlord’s application) applies, the Executive may require a pension fund holder to provide it with the information specified in paragraph (8) of regulation 32 (details of deferred income under personal pension scheme or retirement annuity contract) for the purpose of determining as described in paragraphs (4) and (5) of that regulation the amount of any income foregone under a personal pension scheme or retirement annuity contract by an applicant, or a partner of an applicant, who is aged not less than 60.

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(37) 1939 c. 83

(38) 1947 c. 19

(39) 1980 c. 9

(40) S.R. 1987 No. 459; relevant amending regulations are S.R. 1990 No. 131, S.R. 1992 No. 403 and S.R. 1993 No. 373

(41) S.I. 1995/2705 (N.I. 15); relevant amending order is S.I. 1998/1506 (N.I. 10)

(42) S.R. 1987 No. 461; regulation 7A was inserted by S.R. 1994 No. 80 and amended by S.R. 1994 No. 266, S.R. 1996 No. 11, S.R. 1996 No. 334 and S.R. 1996 No. 448

### **Requirement to produce national insurance number**

5. Where an application for a grant to which Article 61 (means testing in case of application by owner-occupier or tenant) or 62 of the Order applies has been made, the Executive shall require any person, who is a relevant person in respect of that application within the meaning of regulation 6 below, to provide:

- (a) a statement of the relevant person's national insurance number and information or evidence establishing that that number has been allocated to that person; or
- (b) information or evidence enabling the national insurance number which has been allocated to that person to be ascertained; or
- (c) information or evidence that the relevant person has applied for a national insurance number to be allocated to him and has included with that application sufficient information or evidence to enable the number to be allocated.

### **Definition of relevant person**

6.—(1) Subject to paragraph (3), in respect of any one application other than an application for a disabled facilities grant, a relevant person is any person who –

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

provided that a young person shall not be a relevant person except where he is the only applicant.

(2) Subject to paragraph (3), in respect of any one application for a disabled facilities grant a relevant person is any person who –

- (a) is the disabled occupant, or one of the disabled occupants, of the dwelling or the flat in the building and is not a child or young person; or
- (b) is the partner, or a partner, of the disabled occupant or of one of the disabled occupants and is not a child or young person; and

is not the parent or guardian of a disabled child who lives or intends to live in the dwelling or, as the case may be, a flat in the building.

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

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

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

(2) This paragraph applies to –

- (a) any members of the relevant person's family;
- (b) if the relevant person is polygamously married, any partner of his and any child or young person who is a member of his household and for whom he or one of his partners is responsible;
- (c) a child or young person who is living with the relevant person but who is not a member of his household by virtue of regulation 10 (membership of the same household);



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

### **Remunerative work**

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

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

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

(3) Where, for the purposes of paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other

periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.

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

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

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

(7) A person shall not be treated as engaged in remunerative work in any week in which he is participating in the Preparation for Employment Programme.

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

(9) A person shall not be treated as engaged in remunerative work on any day on which that person 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.

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

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

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

- (a) the person who is receiving child benefit in respect of him or, if no-one is in that position, with whom he has been placed under Article 27(2) of the Children (Northern Ireland) Order 1995<sup>(43)</sup>; or
- (b) if there is no such person –
  - (i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or
  - (ii) in any other case the person who has the primary responsibility for him.

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

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

10.—(1) Subject to paragraphs (2) to (5), a relevant person and any partner and, where the relevant person or his partner is treated as responsible by virtue of regulation 9 (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 household notwithstanding that any of them is temporarily living away from the other members of his family.

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(43) S.I. 1995/755 (N.I. 2)

(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) Subject to paragraph (4), a child or young person shall not be treated as a member of the relevant person's household where he is –

- (a) placed with the relevant person or his partner under a relevant enactment; or
- (b) placed with the relevant person or his partner prior to adoption; or
- (c) placed for adoption with the relevant person or his partner pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989<sup>(44)</sup>.

(4) Paragraph (3) shall not apply in any case where a child or young person –

- (a) has been placed with the relevant person or his partner by a Health and Social Services Board under Article 27(2)(a) of the Children (Northern Ireland) Order 1995, and
- (b) in accordance with regulation 9(2)(a) is to be treated for the purposes of paragraph (1) of that regulation as normally living with the relevant person or his partner.

(5) Subject to paragraph (6), paragraph (1) shall not apply to a child or young person who is not living with the relevant person and he –

- (a) is in the care of the Department of Health, Social Services and Public Safety under a relevant enactment; or
- (b) has been placed with a person other than the relevant person prior to adoption; or
- (c) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989.

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

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

(7) In this regulation "relevant enactment" means the Army Act 1955<sup>(45)</sup>, the Air Force Act 1955<sup>(46)</sup>, the Naval Discipline Act 1957<sup>(47)</sup> and the Children (Northern Ireland) Order 1995<sup>(48)</sup>.

### **The applicable amount**

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

- (a) the total of the weekly applicable amounts of all those persons who are relevant persons in the case of that application, and
- (b) £53·79.

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

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<sup>(44)</sup> [S.R. 1989 No. 253](#); to which there are amendments not relevant to these Regulations

<sup>(45)</sup> 1955 c. 18; the relevant amending instrument is [S.I. 1995/755 \(N.I. 2\)](#)

<sup>(46)</sup> 1955 c. 19; the relevant amending instrument is [S.I. 1995/755 \(N.I. 2\)](#)

<sup>(47)</sup> 1957 c. 53; the relevant amending instrument is [S.I. 1995/755 \(N.I. 2\)](#)

<sup>(48)</sup> [S.I. 1995/755 \(N.I. 2\)](#); to which there are amendments not relevant to these Regulations

- (a) as regards a relevant person who is in receipt (and entitled to be in receipt) of income support or an income-based jobseeker's allowance, is £1;
- (b) as regards –
  - (i) a relevant person who is in receipt of guarantee credit; and
  - (ii) those relevant persons who are members of a married or unmarried couple (within the meaning of the State Pension Credit Act 2002), the other member of which is in receipt of guarantee credit,
 is £1;
- (c) as regards any other relevant person, is the amount determined in his case in accordance with regulation 15.

### **Financial resources**

**12.** In respect of any one application, the amount which is to be taken to be the financial resources of the applicant or applicants shall be the total of the incomes of all those persons who are relevant persons in the case of that application, and the income of each relevant person shall be determined in accordance with regulation 19.

## **PART II**

### **REDUCTION IN AMOUNT OF GRANT**

#### **Reduction in amount of grant**

**13.** The amount of any grant which may be paid in respect of an application shall, if the financial resources of the applicant or applicants exceed the applicable amount, be reduced from what it would otherwise have been –

- (a) where the application is accompanied by an owner-occupation certificate, by the aggregate of the amounts obtained by multiplying –
  - (i) by 19·97 that part of any such excess which is £47·95 or less,
  - (ii) by 39·94 that part of any such excess which is greater than £47·95 but not more than £95·90,
  - (iii) by 159·76 that part of any such excess which is greater than £95·90 but not more than £191·80, and
  - (iv) by 399·41 that part of any such excess which is greater than £191·80;
- (b) where the application is accompanied by a tenant's certificate, by the aggregate of the amounts obtained by multiplying –
  - (i) by 11·27 that part of any such excess which is £47·95 or less,
  - (ii) by 22·53 that part of any such excess which is greater than £47·95 but not more than £95·90,
  - (iii) by 90·13 that part of any such excess which is greater than £95·90 but not more than £191·80, and
  - (iv) by 225·32 that part of any such excess which is greater than £191·80.

## Successive applications

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

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

- (a) in a case to which paragraph (3)(a) or (b) applies, by the amount by which any grant paid in respect of any application there referred to was itself reduced by virtue of regulation 13 and this regulation or regulations 11 and 12 of the Housing Renovation etc. Grants (Reduction of Grant) Regulations (Northern Ireland) 1997<sup>(49)</sup> or regulations 10 and 11 of the Housing Renovation etc. Grants (Reduction of Grant) Regulations (Northern Ireland) 1992<sup>(50)</sup>;
- (b) in a case to which paragraph (3)(c) or (d) applies, by the amount by which any grant paid in respect of any application there referred to was itself reduced, by virtue of Article 63(4) of the Order, by reference to persons (other than participating landlords) who are relevant persons in the current application;
- (c) in a case to which paragraph (3)(e) applies, by the amount of any contribution notified under Article 97(1) of the Order to any person who is a relevant person in the current application.

(3) Subject to paragraph (4), this paragraph applies where –

- (a) within the 10 years preceding the date of approval of the current application, at least one application, accompanied by an owner occupation certificate, relating to the same dwelling or building was made, in respect of which at least one of the relevant persons is a relevant person in the current application;
- (b) within the 5 years preceding the date of approval of the current application, at least one application, accompanied by a tenant’s certificate, relating to the same dwelling or building was made, in respect of which at least one of the relevant persons is a relevant person in the current application;
- (c) within the 10 years preceding the date of approval of the current application, at least one tenant’s common parts application relating to the same building was made, in respect of which at least one of the relevant persons in the current application was an occupying tenant in relation to a flat in the building by virtue of a tenancy granted or extended for a term of years of which not less than 5 years remain unexpired at the date of the application and was also an applicant;
- (d) within the 5 years preceding the date of approval of the current application, at least one tenant’s common parts application relating to the same building was made, in respect of which at least one of the relevant persons in the current application was an occupying tenant in relation to a flat in the building by virtue of such an interest as is mentioned in Article 45(2) of the Order and was also an applicant; or
- (e) within the 10 years preceding the date of approval of the current application, at least one of the relevant persons in the current application signified scheme consent under Article 95(1) of the Order in respect of at least one group repair scheme in relation to which the same dwelling, building or flat was, or was part of, a qualifying building.

(4) Paragraph (3) does not apply in any case where, by reason of reduction of grant referred to in paragraph (2)(a) or (b), no grant was paid in respect of the application, except where the eligible works in respect of which the application was approved were executed to a satisfactory standard.

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<sup>(49)</sup> S.R. 1997 No. 456, amended by S.R. 1998 No. 396, S.R. 1999 No. 387, S.R. 2000 Nos. 62 and 325, S.R. 2001 No. 315 and S.R. 2003 Nos. 234, 282 and 387

<sup>(50)</sup> S.R. 1992 No. 412, amended by S.R. 1993 No. 399, S.R. 1994 No. 348 and S.R. 1996 No. 110 and revoked by S.R. 1997 No. 456

## PART III

### APPLICABLE AMOUNTS

#### Applicable amounts

**15.** Subject to regulation 16 (polygamous marriages), the weekly applicable amount of a relevant person shall be the aggregate of such of the following amounts as may apply in his case –

- (a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph (1), (2) or (3), as the case may be, in column 1 of the table in paragraph 1 of Schedule 1 (applicable amounts);
- (b) an amount determined in accordance with paragraph 2 of Schedule 1 in respect of any child or young person who is a member of his family, except a child or young person whose capital, if determined in accordance with Chapter VI of Part IV (capital) in like manner as for the relevant person, except as provided in regulation 33(5) (modification in respect of child and young person) would exceed £6,000;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount specified in Part II of Schedule 1 (family premium);
- (d) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

#### Polygamous marriages

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

- (a) the highest amount applicable to him and one of his partners determined in accordance with paragraph (3) in column 1 of the table in paragraph 1 of Schedule 1 as if he and that partner were a couple;
- (b) an amount equal to the difference between the amounts specified in paragraphs (3)(b) and (1)(b) in column 1 of the table in paragraph 1 of Schedule 1 in respect of each of his other partners;
- (c) an amount determined in accordance with paragraph 2 of Schedule 1 in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household, except a child or young person whose capital, if determined in accordance with Chapter VI of Part IV (capital) in like manner as for the relevant person, except as provided in regulation 33(5) (modifications in respect of child and young person) would exceed £6,000;
- (d) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part II of Schedule 1 (family premium);
- (e) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

**PART IV**  
**INCOME AND CAPITAL**  
**CHAPTER I**  
general

**Income and capital of relevant person**

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

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

**18.**—(1) The income and capital of a relevant person's partner and, subject to paragraph (2) and to regulation 33 (modifications in respect of child and young person), the income of a child or young person which by virtue of regulation 17 is to be treated as income and capital of the relevant person shall be determined in accordance with the following provisions of this Part in like manner as for the relevant person; and any reference to the relevant person shall be construed for the purposes of this Part as if it were a reference to his partner or that child or young person.

(2) Regulations 26(2) and 28(2), so far as they relate to paragraphs 1 to 12 of Schedule 2 (sums to be disregarded in the determination of earnings), shall not apply to a child or young person.

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

- (a) the relevant person shall be treated as possessing capital and income belonging to each such member and the income of any child or young person who is one of that member's family; and
- (b) the income and capital of that member or, as the case may be, the income of that child or young person shall be determined in accordance with the following provisions of this Part in like manner as for the relevant person or, as the case may be, as for any child or young person who is a member of his family.

**CHAPTER II**  
income

**Determination of income on a weekly basis**

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

- (a) his average weekly earnings from employment as an employed earner, determined in accordance with this Chapter and Chapter III,
- (b) his average weekly earnings from employment as a self-employed earner, determined in accordance with this Chapter and Chapter IV,
- (c) his average weekly income other than earnings, determined in accordance with this Chapter and Chapter V,
- (d) the weekly tariff income determined under regulation 41 (determination of tariff income from capital), and

by then deducting the average weekly relevant child care charge, determined in accordance with regulation 20 (treatment of child care charges) from the aggregated weekly income or, in a case where the conditions in paragraph (2) are met, from the aggregated weekly income plus whichever



credit specified in sub-paragraph (b) of that paragraph is appropriate, up to a maximum deduction in respect of the relevant person'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 relevant person's average weekly earnings as mentioned in sub-paragraph (a) or (b) of paragraph (1) are less than the lower of either of his relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in his case; and
- (b) the relevant person or, if he is a member of a couple either the relevant person or his partner, is in receipt of either child tax credit or working tax credit.

(3) The maximum deduction for the purposes of paragraph (1) is –

- (a) where the relevant person's family includes only one child in respect of whom relevant child care charges are paid, £94·50 per week; and
- (b) where the relevant person's family includes more than one child in respect of whom relevant child care charges are paid, £140 per week.

(4) For the purposes of paragraph (1) "income" includes income to which regulations 31 (capital treated as income), 32 (notional income), 44 (determination of grant income) and 47 (treatment of student loans) refer.

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

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

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

(2) Relevant child care charges shall be determined over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to care.

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

- (a) the relevant person's applicable amount includes –
  - (i) disability premium; or
  - (ii) a higher pensioner premium by virtue of the satisfaction of paragraph 9(2)(b) of Schedule 1;
 on account of the other member's incapacity;
- (b) the relevant person's applicable amount would include a disability premium or a higher pensioner premium on account of the other member's incapacity, but for that other member being treated as capable of work by virtue of a determination made in accordance with regulations<sup>(51)</sup> made under section 167E of the 1992 Act<sup>(52)</sup> (incapacity for work: disqualification, etc);
- (c) the relevant person (within the meaning of regulation 6) 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 XIA of the 1992 Act (incapacity

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<sup>(51)</sup> See the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 41) and the Social Security (Incapacity for Work) (Miscellaneous Amendment) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 149)

<sup>(52)</sup> Section 167E was inserted into the 1992 Act by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

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) short-term incapacity benefit at the higher rate or long-term incapacity benefit under paragraphs 2 and 2A of Part 1 of Schedule 4 to the 1992 Act<sup>(53)</sup> (rates of benefits, etc.);
  - (ii) attendance allowance under section 64<sup>(54)</sup> of that Act (entitlement to an attendance allowance);
  - (iii) severe disablement allowance under section 68 of that Act<sup>(55)</sup> (severe disablement allowance: entitlement and rate);
  - (iv) disability living allowance under section 71<sup>(56)</sup> of that Act (disability living allowance);
  - (v) increase of disablement pension under section 104 of that Act (increase where constant attendance needed);
  - (vi) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v);
- (e) a pension or allowance to which head (ii), (iv), (v) or (vi) of subparagraph (d) refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient within the meaning of regulation 18(2) of the Housing Benefit (General) Regulations (Northern Ireland) 1987<sup>(57)</sup> (patients);
- (f) sub-paragraph (d) or (e) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding statutory provision having effect in Great Britain<sup>(58)</sup>; or
- (g) he has an invalid carriage or other vehicle provided to him under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(59)</sup> (provision of vehicles for persons suffering from physical defect or disability) or provided by the Secretary of State under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977<sup>(60)</sup> (provision of vehicles for those suffering disability) or under section 46 of the National Health Service (Scotland) Act 1978<sup>(61)</sup> (provision of vehicles for persons suffering from physical defect or disability).

(4) In this regulation –

“relevant child care charges” are those charges for care to which paragraphs (5) and (6) apply, and shall be calculated on a weekly basis in accordance with paragraph (2).

(5) This paragraph applies to charges paid by the relevant person for care which is provided –

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(53) Paragraphs 2 and 2A were substituted for paragraph 2 by Article 4(2) of [S.I. 1994/1898 \(N.I. 12\)](#) and amended by Article 3(1) of, and Schedule 1 to, [S.R. 1996 No. 73](#)

(54) Section 64 was amended by Article 63(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 ([S.I. 1999/3147 \(N.I. 11\)](#))

(55) Section 68 was repealed by Article 76 and Part IV of Schedule 10 to [S.I. 1999/3147 \(N.I. 11\)](#) which was commenced, with savings, by Articles 2 and 4 of [S.R. 2000 No. 332](#) (c. 14); severe disablement allowance was abolished for new claimants from 6th April 2003

(56) Section 71 was amended by Article 64(1) of [S.I. 1999/3147 \(N.I. 11\)](#)

(57) [S.R. 1987 No. 461](#)

(58) [S.I. 1994/1924](#)

(59) [S.I. 1972/1265 \(N.I. 14\)](#)

(60) [1977 c. 49](#); section 5(2) was amended and subsection (2A) inserted by the Public Health Laboratory Service Act [1979 \(c. 23\)](#), section 1 and subsection (2B) was inserted by section 9 of the Health and Social Security Act [1984 \(c. 48\)](#)

(61) [1978 c. 29](#)

- (a) in the case of any child of the relevant person'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;
  - (b) in the case of any child of the relevant person's family who is 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 sixteenth birthday.
- (6) This paragraph applies to charges paid for care which is provided in accordance with paragraph (7) but not paid –
- (a) in respect of the child's compulsory education; or
  - (b) by a relevant person to a partner or by a partner to a relevant person in respect of any child for whom either of any of them is responsible in accordance with regulation 9 (circumstances in which a person is to be treated as responsible or not responsible for another).
- (7) The care to which paragraph (6) refers may be provided –
- (a) by persons registered under Article 118 of the Children (Northern Ireland) Order 1995<sup>(62)</sup> (registration of childminders and persons providing day care);
  - (b) out of school hours, by a school on school premises or by an education and library board or a Health and Social Services trust –
    - (i) for children who are not disabled in respect of the period beginning on, and including, their twelfth 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, and including, their twelfth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
  - (c) by a child care scheme operating on Crown property where registration under Article 118 of the Children (Northern Ireland) Order 1995 is not required;
  - (d) in schools or establishments to which Article 118 of the Children (Northern Ireland) Order 1995 does not apply by virtue of Article 121(1) to (3) of that Order; or
  - (e) 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 2002<sup>(63)</sup>.
- (8) For the purposes of paragraphs (5) to (7) –
- (a) a person shall be treated as a child in respect of the period commencing on his sixteenth birthday and ending on the day preceding the first Monday in September following his sixteenth birthday; and
  - (b) a child is disabled if he is a child –
    - (i) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;
    - (ii) who is identified as blind in pursuance of arrangements under section 1(1) of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978<sup>(64)</sup>;
    - (iii) who ceased to be identified as blind under such arrangements within the 28 weeks immediately preceding the date of claim.

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<sup>(62)</sup> S.I. 1995/755 (N.I. 2); to which there are amendments not relevant to these Regulations

<sup>(63)</sup> S.I. 2002/1417

<sup>(64)</sup> 1978 c. 53

(9) For the purposes of paragraph (1) a person on parental leave shall be treated as if engaged in remunerative work for the period specified in sub-paragraph (b) (“the relevant period”) provided that –

- (a) in the week before the period of leave began the person was in remunerative work;
- (b) the relevant person incurred relevant child care charges in that week; and
- (c) the person on leave is entitled to parental support.

(10) For the purposes of paragraph (9) the relevant period shall begin on the day on which the person’s parental leave commences and shall end on –

- (a) the date that leave ends;
- (b) if no tax credit is in payment on the date that entitlement to parental support ends, the date that entitlement ends; or
- (c) if a tax credit is in payment on the date that entitlement to parental support ends, the date that entitlement to that award of tax credit ends,

whichever shall occur first.

(11) In paragraphs (9) and (10) –

- (a) “parental support” means –
  - (i) statutory maternity pay under section 160 of the 1992 Act;
  - (ii) statutory paternity pay under section 167ZA or section 167ZB(65) of that Act;
  - (iii) statutory adoption pay under section 167ZL(66) of that Act;
  - (iv) maternity allowance under section 35 of that Act, and
  - (v) income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support (General) Regulations (Northern Ireland) 1987(67); and
- (b) “tax credit” means –
  - (i) working tax credit; and
  - (ii) child tax credit.

(12) Where paragraph (9) applies to a person on parental leave any child care charges in respect of the child to whom the parental leave relates shall not be treated as relevant child care charges for the purposes of this regulation and regulation 19.

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

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

(65) Sections 167ZA and 167ZB were inserted by Article 5 of the Employment (Northern Ireland) Order 2002 ([S.I. 2002/2836 \(N.I. 2\)](#))

(66) Section 167ZL was inserted by Article 6 of [S.I. 2002/2836 \(N.I. 2\)](#)

(67) [S.R. 1987 No. 459](#); paragraph 14B was inserted by regulation 2(5) of the Social Security (Paternity and Adoption Amendment) Regulations (Northern Ireland) 2002 ([S.R. 2002 No. 363](#)) and amended by regulation 2 and paragraph 19 of Schedule 1 to the Social Security (Working Tax Credit and Child Tax Credit Consequential Amendments) Regulations (Northern Ireland) 2003 ([S.R. 2003 No. 195](#)) and regulation 2(3) of the Social Security (Working Tax Credit and Child Tax Credit Consequential Amendments No. 3) Regulations (Northern Ireland) 2003 ([S.R. 2003 No. 338](#))

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

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

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

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

### **Determination of weekly income**

**24.—(1)** For the purposes of regulations 21 (average weekly earnings of employed earners) and 23 (average weekly income other than earnings) where the period in respect of which a payment is made –

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

(2) For the purposes of regulation 22 (average weekly earnings of self employed earners) the weekly amount shall be determined by dividing the relevant person's earnings during the assessment period by the number equal to the number of days in the assessment period and multiplying the quotient by 7.

## **CHAPTER III**

### **employed earners**

### **Earnings of employed earners**

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

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a relevant person on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only insofar as it represents loss of income;
- (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the relevant person's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the employer in respect of –

- (i) travelling expenses incurred by the relevant person between his home and place of employment,
  - (ii) expenses incurred by the relevant person under arrangements made for the care of a member of his family owing to the relevant person's absence from home;
  - (g) any award of compensation made under Article 146(4) or 151(1) of the Employment Rights (Northern Ireland) Order 1996<sup>(68)</sup> (remedies and compensation for unfair dismissal);
  - (h) any such sum as is referred to in section 112(3) of the 1992 Act (certain sums to be earnings for social security purposes);
  - (i) any statutory sick pay under Part XI of the 1992 Act or statutory maternity pay under Part XII of that Act or a corresponding payment under any statute of the Parliament of the United Kingdom extending solely to Great Britain;
  - (j) any payment made under the legislation of, or under any scheme operating in, the Republic of Ireland which is analogous to income to which sub-paragraphs (g) to (i) relate;
  - (k) any remuneration paid by or on behalf of an employer to the relevant person who for the time being is on parental leave or is absent from work because he is ill.
  - (l) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with regulation 18(22) to (25) of the Social Security (Contributions) Regulations (Northern Ireland) 1979<sup>(69)</sup>;
  - (m) any amount, where a relevant person qualifies for the national minimum wage under section 1 of the National Minimum Wage Act 1998<sup>(70)</sup>, which under section 17 of that Act that person shall be taken to be entitled to be paid under his contract as additional remuneration in respect of any pay reference period falling within the 52 weeks immediately preceding the application.
- (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.
- (3) Paragraph 2(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1) (1).
- (4) In this regulation, “any pay reference period” means the period prescribed by the Secretary of State in regulations made under section 1(4) of the National Minimum Wage Act 1998.

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

**26.**—(1) For the purposes of regulation 21 (average weekly earnings of employed earners), the earnings of a relevant person derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings as determined under paragraph (3).

(2) There shall be disregarded from a relevant person's net earnings, any sum, where applicable, specified in any of paragraphs 1 to 16 or 18 of Schedule 2.

<sup>(68)</sup> [S.I. 1996/1919 \(N.I. 16\)](#); Article 146(4) was amended by paragraph 10 of Schedule 1 to the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 ([S.I. 1998/1256 \(N.I. 8\)](#)) and paragraph 11 of Schedule 9 to the Employment Relations (Northern Ireland) Order 1999 ([S.I. 1999/2790 \(N.I. 9\)](#))

<sup>(69)</sup> [S.R. 1979 No. 186](#); paragraphs (22) to (25) were added by regulation 3(d) of [S.R. 1999 No. 119](#)

<sup>(70)</sup> [1998 c. 39](#)

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

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

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

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

(5) Where the relevant person is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary Class 1 contributions under this regulation shall be such amounts as would have been deducted had the relevant person been employed in Northern Ireland.

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

## CHAPTER IV

### self-employed earners

#### Earnings of self-employed earners

**27.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and shall include any allowance payable pursuant to provision or arrangements made by the Department of Employment and Learning<sup>(71)</sup> under section 1(1) of the Employment and Training Act (Northern Ireland) 1950<sup>(72)</sup> or any equivalent allowance payable under Republic of Ireland legislation to the relevant person for the purpose of assisting him in carrying on his business, unless at the date of the application the allowance has been terminated.

(2) “Earnings” shall not include any payment to which paragraph 24 or 25 of Schedule 3 refers (payments in respect of a person accommodated with the relevant person under arrangements made

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(71) See *S.R. & O. (N.I.) 1964 No. 205*, Article 3 for change in style of Ministry of Labour and National Insurance to Ministry of Health and Social Services; *S.R. & O. (N.I.) 1973 No. 504*, Article 6 for transfer of functions from Ministry of Health and Social Services to Department of Manpower Services; *S.I. 1982/846 (N.I. 11)*, Article 3 for renaming the Department of Manpower Services the Department of Economic Development; *S.I. 1999/283 (N.I. 1)*, Article 3(1)(c) for establishing the Department of Higher and Further Education, Training and Employment and *2001 c. 15 (N.I.)*, section 1(1) for renaming the Department of Higher and Further Education, Training and Employment the Department for Employment and Learning

(72) *1950 c. 29 (N.I.)*; section 1(1) was substituted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (*S.I. 1988/1087 (N.I. 10)*)



by a Health and Social Services Board, Health and Social Services trust, training school or voluntary organisation and payments made to the relevant person by a Health and Social Services Board, Health and Social Services trust or voluntary organisation in respect of persons temporarily in the relevant person's care) and also shall not include any sports award.

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

**28.**—(1) For the purposes of regulation 22 (average weekly earnings of self-employed earners) the earnings of a relevant person to be taken into account shall be –

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations (Northern Ireland) 1975(73), his share of the net profit derived from that employment, less –
  - (i) an amount in respect of income tax and of social security contributions payable under the 1992 Act determined in accordance with regulation 29 (deduction of tax and contributions for self-employed earners), and
  - (ii) one half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

(2) There shall be disregarded from a relevant person's net profit, any sum, where applicable, specified in any of paragraphs 1 to 16 or 18 of Schedule 2.

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

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of –
  - (i) income tax, and
  - (ii) social security contributions payable under the 1992 Act, determined in accordance with regulation 29 (deduction of tax and contributions for self-employed earners); and
- (c) one half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

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

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

- (a) any capital expenditure;
- (b) any depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the assessment period;

- (e) the repayment of capital on any loan taken out for the purposes of the employment;
  - (f) any expenses incurred in providing business entertainment; and
  - (g) any debts, except bad debts proved to be such, but this sub-paragraph shall not apply to any expenses incurred in the recovery of a debt.
- (6) A deduction shall be made under paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for –
- (a) the replacement in the course of business of equipment or machinery; and
  - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (7) No deduction shall be made in respect of any expenses under paragraph (3)(a) or (4) where, given the nature and the amount of the expense, it has been unreasonably incurred.
- (8) For avoidance of doubt –
- (a) a deduction shall not be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
  - (b) a deduction shall be made thereunder in respect of –
    - (i) the excess of any value added tax paid by the relevant person in respect of taxable supplies made to him, over any such tax received by him in respect of taxable supplies made by him, calculated with reference to the assessment period;
    - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
    - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (9) Where a relevant person is engaged in employment as a child minder the net profit of the employment shall be one-third of the earnings of that employment, less –
- (a) an amount in respect of –
    - (i) income tax, and
    - (ii) social security contributions payable under the 1992 Act, determined in accordance with regulation 29 (deduction of tax and contributions for self-employed earners); and
  - (b) one half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.
- (10) For the avoidance of doubt, where a relevant person is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed earner or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.
- (11) In this regulation –
- “qualifying premium” means any premium which at the date of application is payable periodically in respect of a retirement annuity contract or a personal pension scheme;
- (12) The amount in respect of any qualifying premium shall be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying premium shall be determined –
- (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365;
  - (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.

(13) Where the relevant person is a self-employed earner in the Republic of Ireland the amounts to be deducted for income tax and contributions under this regulation shall be such amounts as, in the opinion of the Executive, would have been deducted had the relevant person been employed in Northern Ireland.

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

**29.**—(1) The amount to be deducted in respect of income tax under regulation 28(1)(b)(i), (3)(b)(i) or (9)(a)(i) (determination of net profit of self-employed earners) shall be determined on the basis of the amount of chargeable income and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate or the basic rate and higher rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259 (1)(a) and (2) of the Income and Corporation Taxes Act 1988<sup>(74)</sup> (personal reliefs) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate and, if appropriate, the basic rate and higher rate of tax is to be applied and the amount of the personal relief deductible under this paragraph shall be calculated on a pro-rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 28(1)(b)(i), (3)(b)(ii) or (9)(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, (3) of the 1992 Act at the rate applicable at the date of application except where the relevant person's chargeable income is less than the amount for the time being specified in subsection (4) of that section (small earnings exception) for the tax year in which the date of the application falls; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and
  - (b) the amount of Class 4 contributions (if any) which would be payable under section 15(3) of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of the application on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of the application falls; but, if the assessment period is less than a year, those limits shall be reduced pro rata.
- (3) In this regulation “chargeable income” means –
- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 28;
  - (b) in the case of employment as a child minder, one third of the earnings of that employment.

## **CHAPTER V**

### **other income**

### **Determination of income other than earnings**

**30.**—(1) For the purposes of regulation 23 (average weekly income other than earnings), the income of a relevant person which does not consist of earnings to be taken into account shall, subject to paragraphs (2) and (3), be his gross income and any capital treated as income under regulations 31 (capital treated as income) or 33 (modifications in respect of child and young person).

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

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<sup>(74)</sup> 1988 c. 1; section 257 was substituted by section 33 of the Finance Act 1988 (c. 39) and section 259 was amended by sections 30 and 35 of, and paragraphs 1 and 5 of Schedule 3 to, 1988 c. 39

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

(4) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 25(2) applies (payments which are not earnings).

### **Capital treated as income**

**31.** The following shall be treated as income –

- (a) any payment received under an annuity; and
- (b) any payment made in consequence of any personal injury to a relevant person pursuant to any agreement or court order, where such payments are to be made, wholly or partly, by way of periodical payments.

### **Notional income**

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

(2) Except in the case of –

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) a personal pension scheme or retirement annuity contract where the relevant person is aged under 60, or
- (d) any sum to which paragraph 39, 40 or 41 of Schedule 4 refers,

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

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

- (a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where –
  - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
  - (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
  - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

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

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

(5) The amount of any income foregone in a case to which either paragraph (3)(a)(iii) or sub-paragraph (3)(b) applies shall be the income that the relevant person could have received without

purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available, and may be determined taking account of information provided by the pension fund holder in accordance with paragraph (7).

(6) In the case of an application to which Article 61 or 62 of the Order applies, where a relevant person or any partner is aged not less than 60 and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, he shall where the Executive so requires furnish the following information –

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

(7) In the case of an application to which Article 61 or 62 of the Order applies, where the pension fund holder receives from the Executive a request for details concerning a personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (6) refers, the pension fund holder shall provide the Executive with any information to which paragraph (8) refers.

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

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

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

(9) Any payment of income, other than any of the payments referred to in paragraph (10), made –

- (a) to a third party in respect of a single relevant person or a member of his family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension or is a pension or other periodical payment made under a personal pension scheme, be treated as possessed by that single relevant person or, as the case may be, by that member;
- (b) to a third party in respect of a relevant person being a single person or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single person or by that member to the extent that it is used for food, ordinary clothing or footwear, household fuel, eligible rates or rent to which regulation 9 or 10 of the Housing Benefit (General) Regulations (Northern Ireland) 1987<sup>(75)</sup> refers, or both, of that single person or, as the case may be, of any member of that family;
- (c) to a relevant person being a single person or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single person or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

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<sup>(75)</sup> S.R. 1987 No. 461; the relevant amending regulations are S.R. 1988 No. 424, S.R. 1990 No. 297, S.R. 1990 No. 442, S.R. 1993 No. 145, S.R. 1993 No. 149 and S.R. 1996 No. 111

- (10) The payments for the purposes of the exclusion in paragraph (9) are any payment of income –
- (a) made under the Macfarlane Trusts, the Fund, the Eileen Trust or the Independent Living Funds;
  - (b) made pursuant to section 19(1)(a) of the Coal Industry Act 1994<sup>(76)</sup> (concessionary coal);
  - (c) made pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950<sup>(77)</sup> in respect of a person's participation –
    - (i) in an employment programme specified under regulation 75(1)(a)(ii)<sup>(78)</sup> of the Jobseeker's Allowance Regulations;
    - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
    - (iii) in a qualifying course within the meaning specified in regulation 17A(7)<sup>(79)</sup> of those Regulations; or
    - (iv) in the Preparation for Employment Programme or the Preparation for Employment Programme for 50 plus;
  - (d) made under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where –
    - (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980<sup>(80)</sup>;
    - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
    - (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any income apart from that payment.
- (11) Subject to paragraph (12), where –
- (a) a relevant person performs a service for another person; and
  - (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area;

the relevant person shall be treated as possessing such earnings (if any) as is reasonable for that employment unless the relevant person satisfies the Executive that the means of that person are insufficient for him to pay or pay more for the service.

- (12) Paragraph (11) shall not apply –
- (a) to a relevant person who is engaged by a charitable or voluntary organisation or is a volunteer if the Executive is satisfied that it is reasonable for him in any of those cases to provide his services free of charge; or
  - (b) to a service performed in connection with the relevant person's participation –
    - (i) in an employment or training programme in accordance with regulation 19(1)(p) of the Jobseeker's Allowance Regulations, other than where the service is performed in connection with the claimant's participation in the Preparation for Employment Programme or the Preparation for Employment Programme for 50 plus; or

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<sup>(76)</sup> 1994 c. 21

<sup>(77)</sup> 1950 c. 29 (N.I.); section 1(1) was substituted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and section 1(2) and (3) was substituted by Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

<sup>(78)</sup> Regulation 75 was substituted by regulation 8 of S.R. 1997 No. 541 and amended by S.R. 1998 No. 182, S.R. 2000 No. 197 and S.R. 2001 No. 151

<sup>(79)</sup> Regulation 17A was inserted by regulation 4 of S.R. 1998 No. 198 and amended by S.R. 1998 No 418 and S.R. 1999 No. 467

<sup>(80)</sup> 1980 c. 46

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

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

(14) Where a relevant person is treated as possessing any earnings under paragraph (11) the foregoing provisions of this Part shall apply for the purposes of determining the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (3) of regulation 26 (determination of net earnings of employed earners) shall not apply and his net earnings shall be determined by taking into account those earnings which he is treated as possessing, less –

- (a) an amount in respect of income tax equivalent to an amount determined by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate or the basic rate and higher rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal reliefs) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate and, if appropriate, the basic rate and higher rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be determined 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 1992 Act in respect of those earnings if –
  - (i) those earnings were actual earnings; and
  - (ii) the rate of any primary percentage applicable to those earnings were the rate applicable at the date of application; and
- (c) one-half of any sum payable by the relevant person by way of a contribution towards an occupational or personal pension scheme.

(15) In paragraph (9) –

- (a) “rates or rent” means eligible rates or rent to which regulations 9 or 10, as the case may be, of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refer, less any deductions in respect of non-dependants which fall to be made under regulation 63(81) (non-dependant deductions) of those regulations;
- (b) “ordinary clothing or footwear” means clothing or footwear for normal daily use but does not include school uniforms, or clothing or footwear used solely for sporting activities.

(16) Where the relevant person is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary, Class 1 contributions under this regulation shall be such amounts as would have been deducted had the relevant person been employed in Northern Ireland.

### **Modifications in respect of child and young person**

**33.—(1)** Where the income of a child or young person, other than income consisting of any maintenance payment whether under a court order or not, determined in accordance with Chapters I

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(81) Regulation 63 was amended by S.R. 1989 No. 125, S.R. 1990 Nos. 136 and 345, S.R. 1991 Nos. 47 and 79, S.R. 1992 Nos. 404 and 549, S.R. 1993 Nos. 195 and 233 and S.R. 1994 No. 81



to V of this Part exceeds the amount included under Schedule 1 in the determination of the relevant person's applicable amount for that child or young person by way of the personal allowance and any disabled child premium and any enhanced disability premium the excess shall not be treated as income of the relevant person.

(2) Where the capital of a child or young person, if determined in accordance with Chapter VI in like manner as for the relevant person, except as provided in paragraph (5), would exceed £6,000, any income of that child or young person, other than income consisting of any maintenance payment whether under a court order or not, shall not be treated as income of the relevant person.

(3) In determining the net earnings or net profit of a child or young person there shall be disregarded (in addition to any sum which falls to be disregarded under paragraphs 13 and 14 of Schedule 2) any sum specified in paragraphs 15 and 16 of that Schedule.

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

(5) There shall be treated as income any capital of a child or young person payable to him by instalments, one or more of which is outstanding at the date of the application, where the instalment or aggregate of all the instalments outstanding at that date, taken together with the amount of that child's or young person's other capital calculated in accordance with Chapter VI in like manner as for the relevant person, would exceed £6,000.

## CHAPTER VI

### capital

#### Determination of capital

**34.**—(1) The capital of a relevant person to be taken into account shall, subject to paragraph (2), be the whole of his capital determined in accordance with this Part and any income treated as capital under regulation 36 (income treated as capital).

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

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

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

#### Income treated as capital

**36.**—(1) Any bounty derived from employment to which paragraph 6 of Schedule 2 applies and paid at intervals of at least one year shall be treated as capital.

(2) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to –

- (a) income tax under Schedule D or E;
- (b) income tax under the legislation of the Republic of Ireland which is analogous to income tax under Schedule D or E,

shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 25(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 3, 5, 8, 14, 25 or 26 of Schedule 4, any income derived from capital over the period of 52 weeks immediately

preceding the application shall be treated as capital but only from the date it is normally due to be credited to the relevant person's account.

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

(6) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment which is made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Independent Living (Extension) Fund, the Independent Living (1993) Fund or the Independent Living Fund, shall be treated as capital.

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

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

- (a) except in a case to which 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 an Ulster or National Savings Certificate –
  - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date of the application, at the price which it would have realised on that 1st July had it been purchased on the last day of that issue;
  - (ii) in any other case, at its purchase price.

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

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

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer;

less, where there would be expenses attributable to sale, 10 per cent and the amount of any encumbrance secured on it.

### **Notional capital**

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

- (2) Except in the case of –
  - (a) a discretionary trust;
  - (b) a trust derived from a payment made in consequence of a personal injury;
  - (c) any loan which would be obtained only if secured against capital disregarded under Schedule 4;
  - (d) a personal pension scheme or retirement annuity contract, or
  - (e) any sum to which paragraph 39, 40 or 41 of Schedule 4 refers,

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

- (3) Any payment of capital, other than any of the payments referred to in paragraph (4), made –
- (a) to a third party in respect of a single relevant person or a member of his family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension or is a pension or other periodical payment made under a personal pension scheme, be treated as possessed by that single relevant person or, as the case may be, by that member;
  - (b) to a third party in respect of a single relevant person or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single person or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, eligible rates or rent to which regulation 9 or 10 of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refers, or both, of that single person or, as the case may be, of any member of that family;
  - (c) to a single relevant person or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single person or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.
- (4) The payments for the purposes of the exclusion in paragraph (3) are any payment of capital –
- (a) made under any of the Macfarlane Trusts, the Fund, the Eileen Trust or the Independent Living Funds;
  - (b) made pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950<sup>(82)</sup> in respect of a person's participation –
    - (i) in an employment programme specified under section 75(1)(a)(ii) of the Jobseeker's Allowance Regulations;
    - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
    - (iii) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations; or
    - (iv) in the Preparation for Employment Programme or the Preparation for Employment Programme for 50 plus;
  - (c) made under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where –
    - (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980;
    - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
    - (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any income apart from that payment.

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<sup>(82)</sup> 1950 c. 29 (N.I.); section 1(1) was substituted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and section 1(2) and (3) was substituted by Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

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

- (a) the value of his holding in that company shall, notwithstanding regulation 34 (determination of capital), be disregarded; and
- (b) he shall, subject to paragraph (6), 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 the company and the foregoing provisions of this Chapter shall apply for the purposes of determining that amount as if it were actual capital which he does possess.

(6) For so long as the relevant person undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (5) shall be disregarded.

(7) Where a relevant person is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of the Chapter shall apply for the purposes of determining its amount as if it were actual capital which he does possess.

(8) In paragraph (3) –

- (a) “rates or rent” means eligible rates or rent to which regulations 9 or 10, as the case may be, of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refer, less any deductions in respect of, non dependants which fall to be made under regulation 63 (non-dependant deductions) of those Regulations;
- (b) “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.

### **Capital jointly held**

**40.** Except where a relevant person possesses capital which is disregarded under regulation 39(5) (notional capital) where a relevant person and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest in the asset in an equal share and the preceding provisions of this Chapter shall apply for the purposes of calculating the amount of capital which the relevant person is treated as possessing as if it were actual capital which the relevant person does possess.

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

**41.—(1)** Where the relevant person’s capital determined in accordance with this Part exceeds £6,000 it shall be treated as equivalent to a weekly tariff income of –

- (a) where the relevant person is aged under 60, £1 for each complete £250 in excess of £6,000; and
- (b) where the relevant person is aged 60 or over, £1 for each complete £500 in excess of £6,000.

(2) Notwithstanding paragraph (1) where any part of the excess is not a complete £250 or £500, as the case may be, that part shall be treated as equivalent to a weekly tariff income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 36 (income treated as capital).

## PART V

### STUDENTS

#### Interpretation

**42.** In this Part, unless the context otherwise requires –

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

“access funds” means –

- (a) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993<sup>(83)</sup>, or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997<sup>(84)</sup> in each case being grants, or grants, loans or other payments as the case may be, made for the purpose of assisting students in financial difficulties;
- (b) grants made under section 7 of the Further and Higher Education Act 1992<sup>(85)</sup> and described as “learner support funds” or grants made under section 68 of that Act for the purpose of providing funds on a discretionary basis to be paid to students;
- (c) grants made under sections 73(a) and (c) and 74(1) of the Education (Scotland) Act 1980<sup>(86)</sup>;
- (d) discretionary payments, known as “learner support funds”, which are made available to students in further education by institutions out of funds provided by the Learning and Skills Council for England under sections 5, 6 and 9 of the Learning and Skills Act 2000<sup>(87)</sup>;

“contribution” means any contribution (including one which is not paid) in respect of the income of a student or of any other person which the Secretary of State, the Scottish Ministers, or an education authority takes into account in ascertaining the amount of the student’s grant or student loan; or any sums, which in determining the amount of a student’s allowance or bursary in Scotland under the Further and Higher Education (Scotland) Act 1992<sup>(88)</sup>, the Scottish Ministers or the education authority takes into account being sums which the Scottish Ministers or the education authority consider that the holder of the allowance or bursary, the holder’s parents and the holder’s spouse can reasonably be expected to contribute towards the holder’s expenses;

“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;

“education authority” means a government department, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986<sup>(89)</sup>,

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<sup>(83)</sup> S.I. 1993/2810 (N.I. 12); Article 30 was amended by Schedule 4 to S.I. 1997/1772 (N.I. 15)

<sup>(84)</sup> S.I. 1997/1772 (N.I. 15)

<sup>(85)</sup> 1992 c. 13

<sup>(86)</sup> 1980 c. 44; the functions of the Secretary of State were transferred to Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46)

<sup>(87)</sup> 2000 c. 21; section 5 was amended by section 178 of the Education Act 2002 (c. 32) and section 6 was amended by section 34 of, and Schedule 9 to, the Special Educational Needs and Disability Act 2001 (c. 10)

<sup>(88)</sup> 1992 c. 37; to which there are amendments not relevant to these Regulations

<sup>(89)</sup> S.I. 1986/594 (N.I. 3); Article 3 was amended by Article 166 of, and Schedule 9 to, the Education Reform (Northern Ireland) Order 1989 (S.I. 1989/2406 (N.I. 20))

a local education authority as defined in section 114(1) of the Education Act 1944<sup>(90)</sup> (interpretation), a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973<sup>(91)</sup>, any body which is a research council for the purposes of the Science and Technology Act 1965<sup>(92)</sup> or any analogous government department, authority, board or body of the Channel Islands, Isle of Man, or any other country outside Great Britain;

“full-time course of study” means a course normally involving not less than 15 hours attendance a week in term time for the organised day-time study of a single subject or related subjects;

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

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

“grant income” means –

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

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

“qualifying course” means a qualifying course as defined in regulation 17A(7) of the Jobseekers Allowance Regulations<sup>(93)</sup>;

“sandwich course” has the meaning prescribed in regulation 5(2) of the Education (Student Support) Regulations (Northern Ireland) 2003<sup>(94)</sup>, regulation 5(2) of the Education (Student Support) (No. 2) Regulations 2002<sup>(95)</sup> or regulation 5(2) of the Education (Student Loans) (Scotland) Regulations 2000<sup>(96)</sup> as the case may be;

“student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking –

- (a) a course of study at an educational establishment; or
- (b) a qualifying course;

“student loan” means a loan towards a student’s maintenance pursuant to any regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998<sup>(97)</sup>, section 22 of the Teaching and Higher Education Act 1998<sup>(98)</sup> or section 73 of the Education (Scotland) Act 1980<sup>(99)</sup> and shall include, in Scotland, a young student’s bursary paid under regulation 4(1)(c) of the Students' Allowances (Scotland) Regulations 1999<sup>(100)</sup>.

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<sup>(90)</sup> 1944 c. 31, as amended by S.I. 1974/595 Article 3(22) Schedule 1 Part I and by S.I. 1977/293, Article 4(1)

<sup>(91)</sup> 1973 c. 65

<sup>(92)</sup> 1965 c. 4

<sup>(93)</sup> Regulation 17A was inserted by regulation 4 of S.R. 1998 No. 198

<sup>(94)</sup> S.R. 2003 No. 298

<sup>(95)</sup> S.I. 2002/3200

<sup>(96)</sup> S.S.I. 2000/200, as amended by regulation 3(a) of the Education (Student Loans) (Scotland) Regulations 2000 Amendment (No. 2) Regulations 2001 (S.S.I. 2001/311)

<sup>(97)</sup> S.I. 1998/1760 (N.I. 14); see the Education (Student Support) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 298) for loans to students commencing courses after 1st September 1998

<sup>(98)</sup> 1998 c. 30; see the Education (Student Support) Regulations 1999 (S.I. 1999/496) and the Education (Student Loans) Regulations 1998 (S.I. 1998/211)

<sup>(99)</sup> 1980 c. 44; section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30), section 29(1); see the Education (Student Loans) (Scotland) Regulations 1999 (S.I. 1999.1001 (S.71)) and the Education (Student Loans) Regulations 1998

<sup>(100)</sup> S.I. 1999/1131 (S.91)

## Treatment of students

43. These Regulations shall have effect in relation to students subject to the following provisions of this Part.

## Determination of grant income

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

(2) There shall be excluded from a student's grant income any payment –

- (a) intended to meet tuition fees or examination fees;
- (b) in respect of the student's disability;
- (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
- (d) on account of the student maintaining a home at a place other than that at which he resides during his course;
- (e) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of him;
- (f) intended to meet the cost of books and equipment;
- (g) intended to meet travel expenses incurred as a result of his attendance on the course.

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

- (a) the sum of £270 in respect of travel costs; and
- (b) the sum of £340 towards the cost of books and equipment,

whether or not such costs are incurred.

(4) There shall also be excluded from a student's grant income –

- (a) any grant for child care costs payable under regulation 17 of the Education (Student Support) Regulations (Northern Ireland) 2003;
- (b) any grant paid under regulation 15(7) of the Education (Student Support) (No. 2) Regulations 2002<sup>(101)</sup>;
- (c) any grant in respect of a lone parent's child care costs which is payable under regulation 4(1)(c) of the Students' Allowances (Scotland) Regulations 1999 and which is specified as such on the student's award notice; and
- (d) any grant paid under the Schedule to the Education (Assembly Learning Grant Scheme) (Wales) Regulations 2002<sup>(102)</sup>.

(5) Subject to paragraphs (6) and (7), a student's grant income shall be apportioned –

- (a) subject to paragraph (8) in a case where it is attributable to the period of study, equally between the weeks in that period,
- (b) in any other case, equally between the weeks in the period in respect of which it is payable.

(6) Any amount paid in respect of dependants under Article 44(2) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(103)</sup> (defrayment of, or contribution towards, the cost of maintenance of employees etc. undergoing training) and any amount intended for the maintenance

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<sup>(101)</sup> S.I. 2002/3200

<sup>(102)</sup> S.I. 2002/1857 (W. 181) as amended by the Education (Assembly Learning Grant Scheme) (Wales) (Amendment) Regulations 2002 (S.I. 2002/2814 (W. 271))

<sup>(103)</sup> S.I. 1972 /1265 (N.I. 14)



of dependants under Part III of Schedule 6 to the Students Awards Regulations (Northern Ireland) 2002(**104**) shall be apportioned equally over the period of 52 weeks of the year as defined for the purposes of those regulations or, if there are 53 benefit weeks (including part-weeks) in the year, 53.

(7) Any amount intended for the maintenance of dependants to which neither paragraph (6) nor regulation 46(2) (other amounts to be disregarded) apply, shall be apportioned over the same period as the student's loan is apportioned or would have been apportioned had he had one.

(8) In the case of a student on a sandwich course, any periods of experience with the period of study within that period shall be excluded and the student's grant income shall be apportioned equally between the remaining weeks in that period.

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

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

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

**46.**—(1) For the purposes of ascertaining income other than grant income and loans treated as income in accordance with regulation 47 (treatment of student loans), any amounts intended for any expenditure specified in regulation 44(2) (determination of grant income), necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the payments on like expenditure excluded under regulation 44(2) or (3) or 47(6).

(2) Where a grant for school meals for dependent children or a grant for meals for dependent children aged 3 or 4 is paid pursuant to any regulations made under Articles 3 or 8(4) of the Education (Student Support) (Northern Ireland) Order 1998(**105**), that payment shall be disregarded as income.

### **Treatment of student loans**

**47.**—(1) A student loan shall be treated as income unless it is a hardship loan, in which case it shall be disregarded.

(2) For the purposes of paragraph (1) "hardship loan" means a loan made under regulation 22 of the Education (Student Support) Regulations (Northern Ireland) 2003, regulation 21 of the Education (Student Support) (No. 2) Regulations 2002(**106**) or regulation 12 of the Education (Student Loans) (Scotland) Regulations 2000(**e**).

(3) In calculating the weekly amount of the loan to be taken into account as income –

- (a) a loan which is payable in respect of a course that is of a single academic year's duration or less shall be apportioned equally between the weeks in the period beginning with –
  - (i) the start of the single academic year; or
  - (ii) where the course is of less than an academic year's duration, the first day of the course,

and ending with the last day of the course;

- (b) in respect of an academic year of a course which starts other than on 1st September, a loan which is payable in respect of that academic year shall be apportioned equally between the weeks in the period beginning with the benefit week immediately following that which includes the first day of that academic year and ending with the benefit week which includes the last day of that academic year but excluding any benefit weeks falling

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(**104**) S.R. 2003 No. 459

(**105**) S.I. 1998/1760 (N.I. 14)

(**106**) S.I. 2002/3200

entirely within the quarter during which the longest of any vacation is taken and for the purposes of this sub-paragraph, “quarter” shall have the same meaning as that given by the definition in regulation 2 of the Education (Student Support) Regulations (Northern Ireland) 2003;

- (c) a loan which is payable in respect of the final academic year of a course (not being a course of a single year’s duration) shall be apportioned equally between the weeks in the period beginning with the earlier of –
  - (i) the first day of the first benefit week in September; or
  - (ii) the first day of the first benefit week following the beginning of the autumn term, and ending with the last day of the last benefit week before the last day of the course;
- (d) in any other case, the loan shall be apportioned equally between the weeks in the period beginning with the earlier of –
  - (i) the first day of the first benefit week in September; or
  - (ii) the first day of the first benefit week following the beginning of the autumn term, and ending with the last day of the last benefit week in June,
 and, in all cases, from the weekly amount so apportioned there shall be disregarded £10.
- (4) A student shall be treated as possessing a student loan in respect of an academic year where –
  - (a) a student loan has been made to him in respect of that year; or
  - (b) he could acquire such a loan in respect of that year by taking reasonable steps to do so.
- (5) Where a student is treated as possessing a student loan under paragraph (4), the amount of the student loan to be taken into account as income shall be, subject to paragraph (6) –
  - (a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to –
    - (i) the maximum student loan he is able to acquire in respect of that year by taking reasonable steps to do so; and
    - (ii) any contribution whether or not it has been paid;
  - (b) in the case of a student to whom a student loan is not made in respect of an academic year, the maximum student loan that would be made to the student if –
    - (i) he took all reasonable steps to obtain the maximum student loan he is able to acquire in respect of that year; and
    - (ii) no deduction in that loan was made by virtue of a means test.
- (6) There shall be deducted from the amount of a student’s loan income –
  - (a) the sum of £260 in respect of travel costs; and
  - (b) the sum of £319 towards the cost of books and equipment,
 whether or not any such costs are incurred.

### **Disregard of contribution**

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

### **Treatment of payments from access funds**

**49.**—(1) This regulation applies to payments from access funds that are not payments to which regulation 50(2) and (3) apply.

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

(3) Subject to paragraph (4) of this regulation and paragraph 35 of Schedule 3, any payments from access funds which are intended and used for food, ordinary clothing or footwear, household fuel, eligible rates or rent (“ordinary clothing or footwear” and “eligible rates or rent” have the same meaning as in paragraph 12(2) of Schedule 3), of a single relevant person or any other member of his family, shall be disregarded as income to the extent of £20 per week.

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

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

that payment shall be disregarded as income.

### **Income treated as capital**

**50.**—(1) Any amount by way of a refund of tax deducted from a student’s covenant income shall be treated as capital.

(2) An amount paid from access funds as a single lump sum shall be treated as capital.

(3) An amount paid from access funds as a single lump sum which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, eligible rates or rent (“ordinary clothing or footwear” and “eligible rates or rent” have the same meaning as in paragraph 12(2) of Schedule 3), of a single relevant person or, as the case may be, of the relevant person or any other member of his family shall be disregarded as capital but only for a period of 52 weeks from the date of payment.

### **Further disregard of student’s income**

**51.** Where any part of a student’s income has already been taken into account for the purposes of assessing his entitlement to a student grant or student loan, the amount taken into account shall be disregarded in assessing that student’s income.

## **PART VI**

### **MISCELLANEOUS**

#### **Revocations**

**52.** The Regulations listed in Schedule 5 are hereby revoked.

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

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Sealed with the Official Seal of the Department for Social Development on 9th January 2004.

L.S.

*D. M. Crothers*  
A senior officer of the  
Department for Social Development

## SCHEDULE 1

Regulations 15 and 16 Regulations 15(a)  
and (b) and 16(a) to (c)

## APPLICABLE AMOUNTS

## PART I

## PERSONAL ALLOWANCES

1. The amounts specified in column (2) below in respect of each person or couple specified in column (1) shall be the amounts specified for the purposes of regulations 15(a) and 16(a) and (b) –

Column (1) <i>Person or couple</i>	Column (2) <i>Amount</i>
(1) Single person aged	(1)
(a) (a) less than 25	(a) (a) £43·25;
(b) (b) not less than 25	(b) (b) £54·65;
(2) Lone parent aged-	(2)
(a) (a) less than 18	(a) (a) £43·25;
(b) (b) not less than 18	(b) (b) £54·65;
(3) Couple –	(3)
(a) (a) where both members are aged less than 18	(a) (a) £65·30;
(b) (b) where at least one member is aged not less than 18	(b) (b) £85·75.

2. 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 regulations 15(b) and 16(c) –

Column (1) <i>Child or Young Person</i>	Column (2) <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	(a) (a) £38·50;
(b) (b) beginning on the first Monday in September following that person's sixteenth birthday and ending on the day preceding that person's nineteenth birthday	(b) (b) £38·50.

Regulations 15(c) and 16(d)

## PART II

### FAMILY PREMIUM

3.—(1) Subject to sub-paragraph (2), the amount for the purposes of regulations 15(c) and 16(d) shall be £15·75.

(2) Where the relevant person was a lone parent throughout the period starting on 5th April 1998 and ending on the date on which the application is made, and no premium is applicable under paragraph 7, 8, or 11, the amount for those purposes shall be £22·20.

(3) The amounts specified in sub-paragraphs (1) and (2) shall be increased by £10·45 where at least one child is under the age of one year and, for the purposes of this paragraph, where that child's first birthday does not fall on a Monday he shall be treated as being under the age of one year until the first Monday after his first birthday.  
Regulations 15(d) and 16(e)

## PART III

### PREMIUMS

4. Except as provided in paragraph 5, the premiums specified in Part IV shall for the purposes of regulations 15(d) and 16(e) be applicable to a relevant person who satisfies the condition specified in paragraphs 7 to 16 in respect of that premium.

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

6.—(1) Subject to sub-paragraph (2), the following premiums, namely –

- (a) a severe disability premium to which paragraph 13 applies;
- (b) an enhanced disability premium to which paragraph 14 applies;
- (c) a disabled child premium to which paragraph 15 applies; and
- (d) a carer premium to which paragraph 16 applies,

may be applicable in addition to any other premium which may apply under this Schedule.

(2) An enhanced disability premium in respect of a person shall not be applicable in addition to –

- (a) a pensioner premium to which paragraph 7 or 8 applies; or
- (b) a higher pensioner premium to which paragraph 9 applies.

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

7. The condition is that the relevant person –

- (a) is a single person or lone parent aged not less than 60 but less than 75; or
- (b) has a partner and is, or his partner is, aged not less than 60 but less than 75.

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

8. The condition is that the relevant person –

- (a) is a single person or lone parent aged not less than 75 but less than 80; or
- (b) has a partner and is, or his partner is, aged not less than 75 but less than 80.

### Higher pensioner premium

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

### Bereavement Premium

10. The condition is that the relevant person –
- (a) had, as at 9th April 2001, attained the age of 55 but not the age of 60;
  - (b) was in receipt of, but is no longer entitled to, a bereavement allowance under section 39B(107) of the 1992 Act in respect of the death of a spouse who died on or after 9th April 2001; and
  - (c) is a single person or a lone parent.

### Disability premium

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

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

- 12.—(1) Subject to sub-paragraph (2) and paragraphs 17 and 18, the additional condition referred to in paragraphs 9 and 10 is that either –
- (a) the relevant person, or as the case may be, his partner –
    - (i) is in receipt of one or more of the following benefits: attendance allowance, disability living allowance, the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(108), mobility supplement, long-term incapacity benefit under Part III of the 1992 Act or severe disablement allowance under Part II of that Act but in the case of long-term incapacity benefit or severe disablement allowance only where it is paid in respect of him, or
    - (ii) was in receipt of long-term incapacity benefit under Part II of the 1992 Act when entitlement to that benefit ceased on account of the payment of a retirement pension

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(107) Section 39B was inserted by the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))  
(108) S.I. 2002/2005

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under that Act and, if the invalidity pension was payable to his partner, the partner is still a member of the family, or

- (iii) was in receipt of attendance allowance or disability living allowance but payment of benefit has been suspended in accordance with regulations made under section 113(2) of the 1992 Act, or otherwise abated as a consequence of the relevant person or his partner being a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(2) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975<sup>(109)</sup>, or
  - (iv) is provided by the Department of Health, Social Services and Public Safety with an invalid carriage or other vehicle under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(110)</sup> or receives payments by way of grant from the Department of Health, Social Services and Public Safety under Article 30(3) of that Order, or
  - (v) has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a Health and Social Services Board; or
- (b) the relevant person –
- (i) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part XIIA of the 1992 Act<sup>(111)</sup> (incapacity for work), and
  - (ii) has been incapable, or has been treated as incapable, of work for a continuous period of not less than –
    - (aa) in the case of a relevant person who is terminally ill within the meaning of Section 30B(4) of the 1992 Act<sup>(112)</sup>, 196 days; and
    - (bb) in any other case, 364 days.

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

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

(4) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to a person by virtue of his satisfying the additional condition specified in that provision, he shall continue to be treated as satisfying that condition for any period spent by him in undertaking a course of training provided under section 3 of the Employment and Training Act (Northern Ireland) 1950<sup>(113)</sup> or for any period during which he is in receipt of a training allowance.

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

(6) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a

<sup>(109)</sup> S.R. 1975 No. 109; regulation 2(2) was substituted by regulation 2 of S.R. 1992 No. 453

<sup>(110)</sup> S.I. 1972/1265 (N.I. 14)

<sup>(111)</sup> Part XIIA was inserted by Articles 7 and 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

<sup>(112)</sup> Section 30B was inserted by Article 4(1) of S.R. 1994/1898 (N.I. 12)

<sup>(113)</sup> S.I. 1950 c. 29 (N.I.); section 3 was amended by Article 35 and Schedule 4 to the Industrial Training (Northern Ireland) Order 1984 (S.I. 1984/1159 (N.I. 9))



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

### **Severe disability premium**

13.—(1) Subject to paragraphs 17 and 18, the condition is that the relevant person is a severely disabled person.

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

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

(i) he is in receipt of attendance allowance or the care component of a disability living allowance at the highest or middle rate prescribed in accordance with section 72 of the 1992 Act,

(ii) subject to sub-paragraph (4), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing, and

(iii) a carer's allowance is not in payment to anyone in respect of caring for him;

(b) in the case of a relevant person who has a partner –

(i) the relevant person is in receipt of attendance allowance or the care component of a disability living allowance at the highest or middle rate prescribed in accordance with section 72 of the 1992 Act,

(ii) and his partner is also in receipt of such allowance or, if he is a member of a polygamous marriage, all the partners of that marriage are in receipt of such an allowance, and

(iii) subject to sub-paragraph (4), the relevant person has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing, and either a carer's allowance is payable to someone in respect of caring for only one of a couple or, in the case of a polygamous marriage for one or more but not all the partners of the marriage, or else such an allowance is not in payment to anyone in respect of caring for either member of a couple or any partner of a polygamous marriage.

(3) Where a relevant person has a partner who does not satisfy the conditions in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of paragraph 12(1)(a)(v) and (2), that partner will be treated for the purposes of sub-paragraph (2) as if he were not a partner of the relevant person.

(4) For the purposes of sub-paragraph (2)(b) a person shall be treated as being in receipt of –

(a) attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act, if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;

(b) a carer's allowance if he would, but for the person for whom he was caring being a patient for a period exceeding 28 days, be so in receipt.

(5) For the purposes of sub-paragraphs (2)(a)(ii) and (2)(b)(iii) no account shall be taken of either

—

(a) a person receiving attendance allowance or the care component of a disability living allowance at the highest or middle rate prescribed in accordance with section 72 of the 1992 Act, or

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- (b) a person who is blind or is treated as blind within the meaning of paragraph 12(1)(a)(v) and (2).

(6) For the purposes of sub-paragraph (2)(a)(iii) and (b), no account shall be taken of an award of carer's allowance to the extent that payment of such an award is back-dated for a period before the date on which the award is made.

### **Enhanced disability premium**

14.—(1) Subject to sub-paragraph (2), 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 111(3) of the 1992 Act or but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of the 1992 Act in respect of –

- (a) the relevant person; or
- (b) a member of the relevant person's family, who is aged less than 60.

(2) An enhanced disability premium shall not be applicable in respect of a child or young person whose capital, if calculated in accordance with Chapter VI of Part IV of these Regulations in like manner as for the relevant person, except as provided in regulation 33(5), would exceed £6,000.

### **Disabled child premium**

15.—(1) Subject to paragraphs 17 and 18, the condition is that a child or young person for whom the relevant person or a partner of his is responsible and who is a member of the relevant person's household –

- (a) has no capital or capital which, if determined in accordance with Chapter VI of Part IV (capital) in like manner as for the relevant person except as provided in regulation 33(5) (modifications in respect of child and young person), would not exceed £6,000; and
- (b) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (c) is blind or treated as blind within the meaning of paragraph 12(1)(a)(v) or (2).

(2) In paragraph (1), "patient" means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(2) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975<sup>(114)</sup>.

### **Carer premium**

16.—(1) Subject to paragraphs 17 and 18, the condition is that the relevant person or his partner is, or both of them are, in receipt of carer's allowance.

(2) If a relevant person or his partner, or both of them, would be in receipt of carer's allowance but for the provisions of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979<sup>(115)</sup>, where –

- (a) the claim for that allowance was made after 31st October 1992, and
- (b) the person or persons in respect of whose care the allowance has been claimed remains or remain in receipt of attendance allowance or the care component of a disability living allowance at the highest or middle rate prescribed in accordance with section 72 of the 1992 Act,

<sup>(114)</sup> S.R. 1975 No. 109; regulation 2(2) was substituted by regulation 2 of S.R. 1992 No. 453

<sup>(115)</sup> S.R. 1979 No. 242; the relevant amending regulations are S.R. 1980 No. 451, S.R. 1983 No. 36 and S.R. 1984 No. 317

he or his partner, or both of them, as the case may be, shall be treated for the purposes of sub-paragraph (1) as being in receipt of carer's allowance.

(3) Where the relevant person or his partner ceases to be in receipt of, or ceases to be treated as being in receipt of, carer's allowance, the condition mentioned in sub-paragraph (1) shall be treated as satisfied for a period of 8 weeks from the date on which he or his partner, as the case may be, was last in receipt of, or was last treated as being in receipt of, carer's allowance.

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

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

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

18. For the purposes of this Part, 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.

## **PART IV**

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

<i>Premium</i>	<i>Amount</i>
19. —	(1)
(1) Pensioner premium for persons aged under 75 –	
(a) (a) where the relevant person satisfies the condition in paragraph 7(a);	(a) (a) £47·45;
(b) (b) where the relevant person satisfies the condition in paragraph 7(b).	(b) (b) £70·05.
(2) Pensioner premium for persons aged 75 and over –	(2)
(a) (a) where the relevant person satisfies the condition in paragraph 8(a);	(a) (a) £47·45;
(b) (b) where the relevant person satisfies the condition in paragraph 8(b).	(b) (b) £70·05.
(3) Higher pensioner premium –	(3)
(a) (a) where the relevant person satisfies the condition in paragraph 9(1)(a) or (b);	(a) (a) £47·45;

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Premium	Amount
(b) (b) where the relevant person satisfies the condition in paragraph 9(2)(a) or (b).	(b) (b) £70·05.
(4) Disability premium –	(4)
(a) (a) where the relevant person satisfies the condition in paragraph 11(a);	(a) (a) £23·30;
(b) (b) where the relevant person satisfies the condition in paragraph 11(b).	(b) (b) £33·25.
(5) Bereavement premium.	(5) £22·80.
(6) Severe disability premium –	(6)
(a) (a) where the relevant person satisfies the condition in paragraph 13(2)(a);	(a) (a) £42·95;
(b) (b) where the relevant person satisfies the condition in paragraph 13(2)(b)-	(b) (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 13(4),	(i) £42·95;
(ii) in a case where there is no one in receipt of such an allowance.	(ii) £85·90.
(6) Disabled child premium	(6) £41·30 for each child or young person for whom the condition specified in paragraph 15 is satisfied.
(7) Carer premium	(7) £25·10 for each person who satisfies the condition specified in paragraph 16.
(8) Enhanced disability premium	(a) (8) (a) £16·60 in respect of each child or young person in respect of whom the conditions specified in paragraph 14 are satisfied;
	(b) £11·40 in respect of each person who is neither –
	(i) a child or young person; nor
	(ii) a member of a couple in respect of whom the conditions specified in paragraph 16 are satisfied.
	(c) £16·45 where the relevant person is a member of a couple and the conditions specified in paragraph 16

Premium	Amount
	are satisfied in respect of a member of that couple.

## SCHEDULE 2

Regulations 26(2), 28(2) and 33(3)

### SUMS TO BE DISREGARDED IN THE DETERMINATION OF EARNINGS

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

- (a) where –
  - (i) the employment has been terminated because of retirement; and
  - (ii) on retirement he is entitled to a retirement pension under the 1992 Act, or is not so entitled solely because of his failure to satisfy the contribution conditions, any earnings in respect of that employment, but only for a period commencing on the day immediately after the date on which the employment was terminated;
- (b) where before the date of the application the employment has been terminated otherwise than because of retirement, any earnings in respect of that employment except earnings to which regulation 25(1)(b) to (e), (g) and (h) (earnings of employed earners) applies;
- (c) where at the date of application –
  - (i) the employment has not been terminated, but
  - (ii) the relevant person is not engaged in remunerative work, any earnings in respect of that employment except earnings to which regulation 25(1)(d), (e), (i) and (k) and sub-paragraph (j) insofar as it relates to regulation 25(1)(i) applies.

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

- (a) has been engaged in part-time employment as an employed earner or, where the employment has been outside Northern Ireland, would have been so engaged had the employment been in Northern Ireland, and
- (b) has ceased to be engaged in that employment, whether or not that employment has been terminated,

any earnings in respect of that employment except –

- (i) where that employment has been terminated, earnings to which regulation 25(1)(e) applies,
- (ii) where that employment has not been terminated, earnings to which regulation 25(1)(e), (i) and (k) and sub-paragraph (j) insofar as it relates to regulation 25(1)(i) applies.

3.—(1) In a case to which this paragraph applies and paragraph 4 does not apply, £15; but notwithstanding regulation 18 (determination of income and capital of members of a relevant person's family and of a polygamous marriage) if this paragraph applies to a relevant person it shall not apply to his partner except where, and to the extent that, the earnings of the relevant person which are to be disregarded under this paragraph are less than £15.

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

(3) This paragraph applies where –

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- (a) the relevant person is a member of a couple and his applicable amount would, but for the higher pensioner premium under Schedule 1 being applicable, include an amount by way of the disability premium under that Schedule; and
  - (b) he or his partner is under the age of 60 and at least one is engaged in employment.
- (4) This paragraph applies where –
- (a) the relevant person's applicable amount includes an amount by way of the higher pensioner premium under Schedule 1;
  - (b) the relevant person or, if he is a member of a couple, either he or his partner has attained the age of 60;
  - (c) immediately before attaining that age he or, as the case may be, he or his partner was engaged in employment and the relevant person would have been entitled by virtue of sub-paragraph (2) or (3) to a disregard of £15; and
  - (d) he or, if he is a member of a couple, he or his partner has continued in employment.
- (5) This paragraph applies where –
- (a) the relevant person is a member of a couple and his applicable amount would include an amount by way of the disability premium under Schedule 1, but for –
    - (i) the pensioner premium for persons aged 75 and over under that Schedule being applicable, or
    - (ii) the higher pensioner premium under that Schedule being applicable; and
  - (b) he or his partner has attained the age of 75 but is under the age of 80 and the other is under the age of 60 and at least one member of the couple is engaged in employment.
- (6) This paragraph applies where –
- (a) the relevant person is a member of a couple and he or his partner has attained the age of 75 but is under the age of 80 and the other has attained the age of 60;
  - (b) immediately before the younger member attained that age either member was engaged in employment and the relevant person would have been entitled by virtue of sub-paragraph (5) to a disregard of £15; and
  - (c) either he or his partner has continued in employment.
- (7) For the purposes of this paragraph, no account shall be taken of any period not exceeding 8 consecutive weeks occurring on or after the date on which the relevant person or, if he is a member of a couple, he or his partner attained the age of 60 during which either or both ceased to be engaged in employment.
4. In the case where the relevant person is a lone parent, £25.
- 5.—(1) In a case to which neither paragraph 3 nor 4 applies to the relevant person, and subject to sub-paragraph (2), where the relevant person's applicable amount includes an amount by way of the carer premium under Schedule 1 (applicable amounts), £15 of the earnings of the person who is, or at any time in the preceding 8 weeks was, in receipt of carer's allowance or treated in accordance with paragraph 16(2) of that Schedule as being in receipt of such an allowance.
- (2) Where the carer premium is awarded in respect of the relevant person and of any partner of his, their earnings shall, for the purposes of this paragraph, be aggregated, but the amount of earnings to be disregarded in accordance with sub-paragraph (1) shall not exceed £15 of the aggregated amount.
6. Where the carer premium is awarded in respect of a relevant person who is a member of a couple and whose earnings are less than £15, but is not awarded in respect of the other member of the couple, and that other member is engaged in an employment –

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

7. In a case where paragraphs 3, 5, 6 and 8 do not apply to the relevant person and he is one of a couple and a member of that couple is in employment, £10; but, notwithstanding regulation 18 (determination of income and capital of members of relevant person's family and of a polygamous marriage), if this paragraph applies to a relevant person it shall not apply to his partner except where, and to the extent that, the earnings of the relevant person which are to be disregarded under this paragraph are less than £10.

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

- (a) a part-time fireman in a fire brigade maintained in pursuance of the Fire Services (Northern Ireland) Order 1984<sup>(116)</sup>;
- (b) an auxiliary coastguard in respect of coast rescue activities;
- (c) a person engaged part-time in the manning or launching of a life-boat;
- (d) a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001<sup>(117)</sup>;
- (e) a person in the army whose service is restricted to part-time service in Northern Ireland pursuant to section 1 of the Army Act 1992<sup>(118)</sup>, regulations made under section 2 of the Armed Forces Act 1966<sup>(119)</sup>, or the terms of his commission;
- (f) a part-time member of the Police Service of Northern Ireland Reserve appointed under section 37 of the Police (Northern Ireland) Act 2000<sup>(120)</sup>,

but, notwithstanding regulation 18 (determination of income and capital of members of relevant person's family and of a polygamous marriage), if this paragraph applies to a relevant person it shall not apply to his partner except to the extent specified in sub-paragraph (2).

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

- (a) specified in sub-paragraph (1), so much of his earnings as would not in aggregate with the amount of the relevant person's earnings disregarded under this paragraph exceed £15;
- (b) other than one specified in sub-paragraph (1), so much of his earnings from that employment up to £10 as would not, in aggregate with the applicant's earnings disregarded under this paragraph, exceed £15.

9. Where the relevant person is engaged in one or more employments specified in paragraph 8(1), but his earnings derived from such employments are less than £15 in any week and he is also engaged in any other employment so much of his earnings from that other employment, up to £5 if he is a single person, or up to £10 if he has a partner, as would not, in aggregate with the amount of his earnings disregarded under paragraph 8, exceed £15.

10. In a case to which none of the paragraphs 3 to 9 applies, £5.

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<sup>(116)</sup> S.I. 1984/1821 (N.I. 11); to which there are amendments not relevant to these Regulations

<sup>(117)</sup> S.I. 2001/1004

<sup>(118)</sup> 1992 c. 39

<sup>(119)</sup> 1966 c. 45; section 2 was amended by section 2 of the Army Act 1992

<sup>(120)</sup> 2000 c. 32

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11. Any amount or the balance of any amount which would fall to be disregarded under paragraph 19 or 20 of Schedule 3 had the relevant person's income which does not consist of earnings been sufficient to entitle him to the full disregard thereunder.

12. Where a relevant person –

- (a) is in receipt of income support, guarantee credit or an income-based jobseeker's allowance; or
- (b) is a member of a married or unmarried couple (within the meaning of the State Pension Credit Act (Northern Ireland) 2002)(121) and the other member of that couple is in receipt of guarantee credit, his earnings.

13. Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

14. Where a payment of earnings is made in a currency other than sterling, any banking charges or commission payable in converting that payment into sterling.

15. Any earnings of a child or young person except earnings to which paragraph 16 applies.

16. In the case of earnings of a child or young person who has ceased full-time education for the purposes of section 138 of the 1992 Act (meaning of child) and who is engaged in remunerative work –

- (a) if an amount by way of a disabled child premium under Schedule 1 is included in the determination of his applicable amount, £15;
- (b) in any other case, £5.

17. In this Schedule “part-time employment” means employment in which the person is engaged on average for less than 16 hours a week.

18.—(1) In a case where the relevant person is a person who satisfies at least one of the conditions specified 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 paragraphs 3 to 10 shall be increased by £11·90.

(2) The conditions of this sub-paragraph are that –

- (a) the relevant person or, if he is a member of a couple, either the relevant person or his partner, is a person to whom regulation 20(1)(c) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(122) applies; or
- (b) the relevant person is, or if he is a member of a couple, at least one member of that couple is aged at least 25 and is engaged in remunerative work for on average not less than 30 hours per week;
- (c) the relevant person is a member of a couple and –
  - (i) at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week;
  - (ii) the aggregate number of hours for which the couple are engaged in remunerative work is at least 30 hours per week; and
  - (iii) his applicable amount includes a family premium under paragraph 3 of Schedule 1;
- (d) the relevant person is a lone parent who is engaged in remunerative work for on average not less than 30 hours per week;

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(121) 2002 c. 14 (N.I.)

(122) S.I. 2002/2005



- (e) the relevant person is, or if he is a member of a couple, at least one member of that couple is or both members are, engaged in remunerative work for on average not less than 30 hours per week and –
  - (i) the relevant person's applicable amount includes a higher pensioner premium or a disability premium under paragraph 9 or 11 of Schedule 1 respectively; and
  - (ii) where he is a member of a couple, at least one member of that couple satisfies the qualifying conditions for the higher pensioner premium or disability premium referred to in paragraph (i) and is engaged in remunerative work for on average not less than 16 hours per week.
- (3) The following are the amounts referred to in sub-paragraph (1) –
  - (a) the amount calculated as disregardable from the relevant person's earnings under paragraphs 3 to 10;
  - (b) the amount of child care charges calculated as deductible under regulation 19(1); and
  - (c) £11·90.
- (4) The provisions of regulation 4 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 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 were a reference to 30 hours.

### SCHEDULE 3

Regulation 30(2)

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

1. Any amount attributable to tax on income which is to be taken into account under regulation 30 (determination of income other than earnings).
2. Any payment in respect of any expenses incurred, or to be incurred, by a relevant person who is –
  - (a) engaged by a charitable or voluntary organisation, or
  - (b) a volunteer,if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 32(4) (notional income).
3. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.
4. Where a relevant person –
  - (a) is in receipt of income support, guarantee credit or an income-based jobseeker's allowance; or
  - (b) is a member of a married or unmarried couple (within the meaning of the State Pension Credit Act (Northern Ireland) 2002) and the other member of that couple is in receipt of guarantee credit,the whole of his income.
5. Any disability living allowance.
6. Any concessionary payment made to compensate for the non-payment of –
  - (a) any payment specified in paragraph 5 or 8;

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- (b) income support;
  - (c) state pension credit;
  - (d) or an income-based jobseeker's allowance.
7. Any mobility supplement under Article 26A of the Naval, Military and Air Forces, etc, (Disablement and Death) Service Pensions Order 1983(123) (including such a supplement by virtue of any other scheme or order) or under Article 25A of the Personal Injuries (Civilians) Scheme 1983(124) or any payment intended to compensate for the non-payment of such a supplement.
8. Any attendance allowance.
9. Any payment to the relevant person as holder of the Victoria Cross or of the George Cross or any analogous payment.
10. Any –
- (a) educational maintenance allowances payable under Article 50 of the Education and Libraries (Northern Ireland) Order 1986(125) (provisions to assist persons to take advantage of educational facilities); or
  - (b) sum (not being an allowance coming within sub-paragraph (a)) in respect of a course of study attended by a child or young person payable under Article 50 of the Education and Libraries (Northern Ireland) Order 1986.
11. In the case of a relevant person participating in provision or arrangements for training under section 1(1) of the Employment and Training Act (Northern Ireland) 1950(126), or attending a course at an employment rehabilitation unit established under that section –
- (a) any travelling expenses reimbursed to the relevant person;
  - (b) if he receives any lodging allowance under section 3(3) of the Employment and Training Act (Northern Ireland) 1950, such amount, if any, of that allowance expressed to be a living away from home allowance;
  - (c) any child care expenses reimbursed to the relevant person in respect of his participation in a New Deal option, in the Preparation for Employment Programme or the Preparation for Employment Programme for 50 plus;
- but this paragraph, except in so far as it relates to a payment under any of sub-paragraphs (a) to (c), does not apply to any part of any allowance under section 3(3) of the Employment and Training Act (Northern Ireland) 1950.
- 12.—(1) Except where sub-paragraph (2) applies and subject to sub-paragraph (3) and paragraphs 34 and 35, £20 of any charitable payment or of any voluntary payment made or due to be made at regular intervals.
- (2) Subject to sub-paragraph (3) and paragraph 35, any charitable payment or voluntary payment made or due to be made at regular intervals which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, eligible rates or rent to which regulation 9 or 10 of

(123) S.I. 1983/883; Article 26A was inserted by S.I. 1983/1116 and amended by S.I. 1983/1521, S.I. 1986/592, S.I. 1990/1308, S.I. 1991/766, S.I. 1992/710, S.I. 1995/766 and S.I. 1997/286

(124) S.I. 1983/686; Article 25A was inserted by S.I. 1983/1164 and amended by S.I. 1983/1540, S.I. 1986/628, S.I. 1989/415, S.I. 1990/1300, S.I. 1991/708, S.I. 1992/702, S.I. 1995/445 and S.I. 1997/812

(125) S.I. 1986/594 (N.I. 3); Article 50 was amended by Article 9 of, and the Schedule to, the Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760 (N.I. 14))

(126) 1950 c. 29 (N.I.); section 1(1) was substituted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

the Housing Benefit (General) Regulations (Northern Ireland) 1987<sup>(127)</sup> refers, or both, of a single relevant person or, as the case may be, of the relevant person or any other member of his family.

(3) Sub-paragraphs (1) and (2) shall not apply to a maintenance payment which is made or due to be made by –

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

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

(5) In sub-paragraph (2) –

- (a) “rates or rent” means eligible rates or rent to which regulations 9 or 10, as the case may be, of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refer, less any deductions in respect of non-dependants which fall to be made under regulation 63 (non-dependant deductions) of those regulations;
- (b) “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.

13. Any war disablement pension or war widow's or war widower's pension or a payment made to compensate for the non-payment of such a pension.

14. Any pension paid by the government of a country outside the United Kingdom and which either –

- (a) is analogous to a war disablement pension;
- (b) is analogous to a war widow's or war widower's pension.

15. Subject to paragraph 34, £10 of any of the following, namely –

- (a) 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;
- (b) loan treated as income by virtue of regulation 47.

16. Subject to paragraph 34, £15 of any –

- (a) widowed mother's allowance paid pursuant to section 37 of the 1992 Act;
- (b) widowed parent's allowance paid pursuant to section 39A of the 1992 Act.

17.—(1) Any income derived from capital to which the relevant person is, or is treated under regulation 40 (capital jointly held) as, beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraphs 1, 2, 3, 5, 8, 14, 25 or 26 of Schedule 4.

(2) Income derived from capital disregarded under paragraphs 3(a), 5, 25 or 26 of Schedule 4 but only to the extent of any mortgage payments or payment of rates made in respect of the dwelling or buildings in the period during which that income accrued.

18. Where a relevant person receives income under an annuity purchased with a loan which satisfies the following conditions –

- (a) that the loan was made as part of a scheme under which not less than 90 per cent of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in

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<sup>(127)</sup> S.R. 1987 No. 461; the relevant amending regulations are S.R. 1988 No. 424, S.R. 1990 No. 297, S.R. 1990 No. 442, S.R. 1993 No. 145, S.R. 1993 No. 149 and S.R. 1996 No. 111

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this paragraph referred to as “the annuitants”) who include the person to whom the loan was made;

- (b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;
- (c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;
- (d) that the loan was secured on a dwelling in Northern Ireland and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling; and
- (e) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid,

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

- (i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988<sup>(128)</sup> (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;
- (ii) in any other case, the interest which is payable on the loan without deduction of such a sum.

19. Where the relevant person makes a parental contribution in respect of a student attending a course at an establishment in the United Kingdom or undergoing education in the United Kingdom, which contribution has been assessed for the purposes of calculating under regulations made in exercise of the powers conferred by Articles 50 and 51 of the Education and Libraries (Northern Ireland) Order 1986<sup>(129)</sup>, that student’s award under those Articles or 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.

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

- (a) is not in receipt of any award or student grant or student loan in respect of that education; or
- (b) is in receipt of an award under Article 50(3) of the Education and Libraries (Northern Ireland) Order 1986 (awards made at the discretion of boards),

and the relevant person makes payments by way of a contribution towards the student’s maintenance, other than a parental contribution falling within paragraph 19, an amount specified in sub-paragraph (2) in respect of each week during the student’s term.

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

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

whichever is less.

21. Any payment made to the relevant person by a child or young person or a non-dependant.

<sup>(128)</sup> 1988 c. 1; section 369(1A) was inserted by section 81(3) of the Finance Act 1994 (c. 9)

<sup>(129)</sup> S.I. 1986/594 (N.I. 3); Article 50(1) and (2) were repealed by Article 9 of, and the Schedule to, the Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760 (N.I. 14)) and Article 51 was substituted by Article 43 and Part II of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1))

22. Where the relevant person occupies a dwelling as his only or main residence which is also occupied by a person other than one to whom paragraph 21 or 39 refers and there is a contractual liability to make payments to the relevant person in respect of the occupation of the dwelling by that person or a member of his family –

- (a) £4 of the aggregate of any payments made in any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family; and
- (b) a further £9·25, where the aggregate of any such payments is inclusive of an amount for heating.

23. Any income in kind.

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

25.—(1) Any payment made to the relevant person in respect of a child or young person who is a member of his family –

- (a) in accordance with the Adoption Allowance Regulations (Northern Ireland) 1996(**130**);
- (b) in accordance with the Adoption Allowance Regulations 1991(**131**);
- (c) in accordance with the Adoption Allowance (Scotland) Regulations 1996(**132**);
- (d) which is a payment made by a local authority in pursuance of paragraph 15(1) of Schedule 1 to the Children Act 1989(**133**) (local authority contribution to child's maintenance);
- (e) which is a payment made by an authority, as defined in Article 2 of the Children (Northern Ireland) Order 1995(**134**), in pursuance of Article 15 of, and paragraph 17 of Schedule 1 to, that Order (contribution by an authority to a child's maintenance),

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

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

- (a) to whom regulation 33(2) applies (capital in excess of £6,000), the whole payment;
- (b) to whom that regulation does not apply, so much of the weekly amount of the payment as exceeds the amount included under Schedule 1 in the determination of the relevant person's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any.

26. Any payment made by a voluntary organisation under Article 75 of the Children (Northern Ireland) Order 1995 to the relevant person with whom a person is placed by virtue of arrangements made under that Article.

27. Any payment made to the relevant person or his partner for a person ("the person concerned") who is not normally a member of the relevant person's household but is temporarily in his care, by –

- (a) a Health and Social Services Board;
- (b) a training school;
- (c) a voluntary organisation, or

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(**130**) S.R. 1996 No. 438

(**131**) S.I. 1991/2030, as amended by regulation 2 of the Adoption Allowance (Amendment) Regulations 1991 (S.I. 1991/2130)

(**132**) S.I. 1996 No. 3257 (S. 247)

(**133**) 1989 c. 41

(**134**) S.I. 1995/755 (N.I. 2)

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- (d) the person concerned pursuant to Article 36(7) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(135)</sup>.

28. Any payment made by a Health and Social Services Board under Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995 (Health and Social Services Boards' duty to promote the welfare of children or powers to grant financial assistance to persons in, or formerly in, their care).

29.—(1) Subject to sub-paragraph (2), any payment received under an insurance policy taken out to insure against the risk of being unable to maintain repayments –

- (a) on a loan which is secured on the dwelling which the relevant person occupies as his home; or
- (b) under a regulated agreement as defined for the purposes of the Consumer Credit Act 1974<sup>(136)</sup> or under a hire-purchase agreement or a conditional sale agreement as defined in section 5 of the Consumer Protection Act (Northern Ireland) 1965<sup>(137)</sup>.

(2) A payment referred to in sub-paragraph (1) shall only be disregarded to the extent that the payment received under that policy does not exceed the amounts, calculated on a weekly basis, which are used to –

- (a) maintain the repayments referred to in sub-paragraph (1)(a) or, as the case may be, (b); and
- (b) meet any amount due by way of premiums on –
  - (i) that policy; or
  - (ii) in a case to which sub-paragraph (1)(a) applies, an insurance policy taken out to insure against loss or damage to any building or part of a building which is occupied by the relevant person as his home and which is required as a condition of the loan referred to in sub-paragraph (1)(a).

30. Any payment of income which by virtue of regulation 36 (income treated as capital) is to be treated as capital.

31. Any social fund payment.

32. Any payment under section 144 of the 1992 Act (entitlement of pensioners to Christmas bonus).

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

34. The total of a relevant person's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 18(3) (determination of income and capital of members of relevant person's family and of a polygamous marriage) to be disregarded under paragraphs 12(1), 15 and 16 shall in no case exceed £20 per week.

35.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust ("the Trusts"), the Fund, or the Independent Living Funds.

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

<sup>(135)</sup> S.I. 1972/1275 (N.I. 14); Article 36 was substituted by Article 25 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)).

<sup>(136)</sup> 1974 c. 39

<sup>(137)</sup> 1965 c. 14 (N.I.); section 5 was amended by section 66(4) of, and Schedule 6 to, the Hire Purchase Act (Northern Ireland) 1966 (c. 42 (N.I.)) and by paragraph 46 of Schedule 4 to the Consumer Credit Act 1974 (c. 39)

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced;
  - (b) any child who is a member of that person's family or who was such a member and who is a member of the relevant person's family; or
  - (c) any young person who is a member of that person's family or who was such a member and who is a member of the relevant person's family.
- (3) Any payment by or on behalf of the partner or former partner of a person who suffered or is suffering from haemophilia or who was or is a qualifying person, provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, which derives from a payment made under any of the Trusts and which is made to or for the benefit of –
- (a) the person who is suffering from haemophilia or who is a qualifying person;
  - (b) any child who is a member of that person's family or who was such a member and who is a member of the relevant person's family; or
  - (c) any young person who is a member of that person's family or who was such a member and who is a member of the relevant person's family.
- (4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under any of the Trusts where –
- (a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child or young person who is or had been a member of that person's family; and
  - (b) the payment is made either –
    - (i) to that person's parent or step-parent, or
    - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,but only for a period from the date of the payment until the end of 2 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, nor any child or young person who was or had been a member of his family; and
  - (b) the payment is made either –
    - (i) to that person's parent or step-parent, or
    - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,but only for a period of 2 years from the relevant date.
- (6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.
- (7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund.
36. Any housing benefit and any housing benefit in the form of a rate rebate.
37. Any payment made under arrangements made by the Department for Social Development to compensate for the loss (in whole or in part) of entitlement to housing benefit.



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38. Any resettlement benefit which is paid to the relevant person by virtue of regulation 3 of the Social Security (Hospital In-Patients) (Amendment No. 2) Regulations (Northern Ireland) 1987(**138**).

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

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

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

40. Any special war widows payment made under –

- (a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865(**139**);
- (b) the Royal Warrant dated 21st February 1990 amending the Schedule to the Army Pensions Warrant 1977(**140**);
- (c) the Queen’s Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917(**141**);
- (d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980(**142**);
- (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(**143**);

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

41. Any payment to a juror or witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the 1992 Act.

42.—(1) Any payment or repayment made under regulations 3, 5 or 8 of the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 1989(**144**) (entitlement to full remission and payment, persons entitled to remission in part or payment in part, or repayment).

(2) Any payment or repayment made by the Department of Health, Social Services and Public Safety which is analogous to a payment or repayment mentioned in sub-paragraph (1).

(**138**) S.R. 1987 No. 391

(**139**) 1865 c. 73; copies of the Regulations are available from: Ministry of Defence, NPC2, Room 317, Archway Block South, Old Admiralty Building, Spring Gardens, London SW1A 2BE

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

(**141**) 1917 c. 51; section 2 was amended by S.I. 1968/1699, Article 5(4)(a)

(**142**) 1980 c. 9; copies of the Regulations are available from the Ministry of Defence, NPC2, Room 317, Archway Block South, Old Admiralty Building, Spring Gardens, London SW1A 2BE

(**143**) Army Code No. 60589 published by HMSO

(**144**) S.R. 1989 No. 348; the relevant amending regulations are S.R. 1990 No. 313 and S.R. 1991 No. 224



43. Any payment made under regulation 8, 9, 10 or 12 of the Welfare Foods Regulations (Northern Ireland) 1988(**145**) (failure to receive milk tokens, inability to purchase dried milk at a reduced price, inability to obtain free vitamins or absence of beneficiary for less than a week).

44. Any payment made under a scheme established by the Secretary of State to assist relatives and other persons to visit persons in custody.

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

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

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

46. Any payment (other than a training allowance) made, whether by the Department for Employment and Learning or any other person, under the Disabled Persons (Employment) Act (Northern Ireland) 1945(**146**) or in accordance with arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950(**147**) to assist disabled persons to retain employment despite their disability.

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

48.—(1) Where the relevant person is in receipt of any benefit under Parts II, III or V of the 1992 Act or pension under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(**148**) any increase in the rate of that benefit arising under Part IV (increases for dependants) or section 106(a) (unemployability supplement) of that Act or the rate of that pension under that Order where the dependant in respect of whom the increase is paid is not a member of the relevant person's family.

(2) For the purposes of sub-paragraph (1), an addition to a contribution-based jobseeker's allowance under regulation 9(4) of the Jobseeker's Allowance (Transitional Provisions) Regulations (Northern Ireland) 1996(**149**) shall be treated as an increase of a benefit under the 1992 Act arising under Part IV of that Act.

49. Any payment made under the legislation of, or under any scheme operating in the Republic of Ireland which is analogous to any income to which the preceding paragraphs relate.

50. Any supplementary pension under Article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows and widowers)(**150**).

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(145) S.R. 1988 No. 137; the relevant amending regulations are S.R. 1991 No. 81, S.R. 1999 No. 397, S.R. 2001 No. 139, S.R. 2003 No. 202 and S.R. 2003 No. 393

(146) 1945 c. 6 (N.I.); to which there are amendments not relevant to these Regulations

(147) 1950 c. 29 (N.I.); section 1 (1) was substituted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

(148) S.I. 1983/883; relevant amending instruments are S.I. 1983/1116 and 1521, 1984/1154 and 1687, 1985/1201, 1986/592, 1987/165, 1988/248 and 2248, 1989/156, 1990/250 and 1308, 1991/766, 1992/710 and 3208, 1993/598, 1994/772 and 1906, 1995/766, 1996/732 and 1638, 1997/286, 1998/262, 1999/294, 2000/252, 2001/409, 2002/792 and 2003/434

(149) S.R. 1996 No. 200

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

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51. In the case of a pension awarded at the supplementary rate under Article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows and widowers)(**151**), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

52.—(1) Any payment which is –

- (a) made under any of the Dispensing Instruments to a widow or a widower of a person –
  - (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
  - (ii) whose service in such capacity terminated before 31st March 1973; and
- (b) equal to the amount specified in Article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

(2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances)(**152**).

53. Except in a case which falls under paragraph 18 of Schedule 2, where the relevant person is entitled to the 30 hour element of working tax credit referred to in regulation 20(1)(c) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, any amount of working tax credit up to £11·90.

54. Any payment made under Article 15A of the Health and Personal Social Services (Northern Ireland) Order 1972(**153**).

55. Any mandatory top-up payment made to a person pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950 in respect of that person’s participation in –

- (a) an employment programme specified in –
  - (i) regulation 75(1)(a)(ii)(**154**) of the Jobseeker’s Allowance Regulations (Voluntary Sector Option of the New Deal);
  - (ii) regulation 75(1)(a)(iii) of those Regulations (Environmental Task Force Option of the New Deal) or;
- (b) the Preparation for Employment Programme or in the Preparation for Employment Programme for 50 plus.

56. Any discretionary payment to meet or help meet special needs made to a person pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950 in respect of that person’s participation in the Full-Time Education and Training Option of the New Deal as specified in regulation 75(1)(b)(ii) of the Jobseeker’s Allowance Regulations.

57.—(1) Subject to sub-paragraph (2), any discretionary payment made pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950 to meet, or help meet, special needs of a person who is undertaking a qualifying course within the meaning specified in regulation 17A(7) of the Jobseeker’s Allowance Regulations.

(2) No amount shall be disregarded pursuant to sub-paragraph (1) in respect of travel expenses incurred as a result of the student’s attendance on the course where an amount in respect of those expenses has already been disregarded pursuant to regulation 46 (other amounts to be disregarded).

(**151**) [S.I. 1983/686](#); relevant amending instruments are [S.I. 1994/715](#) and [1994/2021](#)

(**152**) Copies of the Dispensing Instruments are available from the Department for Social Development, Social Security Policy and Legislation Division, Stormont Estate, Belfast BT4 3SJ

(**153**) [S.I. 1972/1265 \(N.I. 14\)](#) as inserted by Article 3 of the Personal Social Services (Direct Payments) (Northern Ireland) 1996 ([S.I. 1996/1923 \(N.I. 19\)](#))

(**154**) Regulation 75 was substituted by regulation 8 of [S.R. 1997 No. 541](#) and amended by [S.R. 1998 No. 182](#) and [S.R. 2000 No. 197](#)

58. Any child care expenses reimbursed to the relevant person in respect of his participation in the Preparation for Employment Programme but this paragraph does not apply to any part of any allowance under section 1 of the Employment and Training Act (Northern Ireland) 1950.

59. Any mandatory top-up payment made to a person pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950 in respect of that person's participation in the Preparation for Employment Programme.

60.—(1) Any payment of a sports award except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear or household fuel of the relevant person or where the relevant person is a member of a family, any other member of his family, or any eligible rates or rent to which regulation 9 or 10 of the Housing Benefit (General) Regulations (Northern Ireland) 1987(**155**) refers for which that relevant person or member is liable.

(3) For the purposes of sub-paragraph (2) –

- (a) “food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made;
- (b) “ordinary clothing and footwear” means clothing or footwear for normal daily use but does not include school uniforms or clothing or footwear used solely for sporting activities;
- (c) “rates or rent” means eligible rates or rent to which regulations 9 or 10 of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refer less any deductions in respect of non-dependants which fall to be made under regulation 63(**156**) of those Regulations.

61. Any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations (Northern Ireland) 2001(**157**).

62. Any payment –

- (a) from a trust whose funds are derived from a payment made in consequence of any personal injury to a relevant person;
- (b) under an annuity purchased –
  - (i) pursuant to any agreement or court order to make payments to a relevant person; or
  - (ii) from funds derived from a payment made, in consequence of any personal injury to a relevant person; and
- (c) (not falling within (a) and (b) above) received by virtue of any agreement or court order to make payments to a relevant person in consequence of any personal injury to that person.

## SCHEDULE 4

Regulation 34(2)

### CAPITAL TO BE DISREGARDED

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

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(**155**) S.R. 1987 No. 461; the relevant amending regulations are S.R. 1988 No. 424, S.R. 1990 Nos. 297 and 442, S.R. 1993 Nos. 145 and 149 and S.R. 1996 No. 111

(**156**) Regulation 63 was amended by S.R. 1989 No. 125, S.R. 1990 Nos. 136 and 345, S.R. 1992 Nos. 85, 404 and 549, S.R. 1993 Nos. 145, 195 and 233, S.R. 1996 No. 334, S.R. 1997 Nos. 3 and 113, S.R. 1998 No. 81 and S.R. 2000 No. 38

(**157**) S.R. 2001 No. 216

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2. Any one dwelling normally occupied by the relevant person as his only or main residence including any premises not so occupied which it is impracticable or unreasonable to sell separately, but, notwithstanding regulation 18 (determination of income and capital of members of relevant person's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

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

- (a) which he acquires for occupation, and intends to occupy as such residence within 26 weeks from the date of acquisition or such longer period as is reasonable in the circumstances to enable the relevant person to obtain possession and commence occupation,
- (b) in respect of which he is taking steps to attain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings, whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation, or
- (c) to which essential repairs or alterations are required in order to render it fit for such occupation, for such period as is necessary to enable those repairs or alterations to be carried out, but, notwithstanding regulation 18 (determination of income and capital of members of relevant person's family and of a polygamous marriage) only one dwelling shall be disregarded under this paragraph.

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

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

(a) (2) (a) Sub-paragraph (1) shall not apply where a dwelling is disregarded under paragraph 26;

(b) sub-paragraph (1)(b) shall not apply where a dwelling is disregarded under paragraph 3.

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

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

6. Where a relevant person –

- (a) is in receipt of income support, guarantee credit or an income-based jobseeker's allowance; or
- (b) is a member of a married or unmarried couple (within the meaning of the State Pension Credit (Northern Ireland) Act 2002) and the other member of that couple is in receipt of guarantee credit,

the whole of his capital.

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

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

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

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

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

- (a) any payment specified in paragraph 5, 7 or 8 of Schedule 3;
- (b) working families' tax credit under section 127 of the 1992 Act or disabled person's tax credit under section 128 of that Act<sup>(158)</sup>;
- (c) an income-based jobseeker's allowance;
- (d) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations (Northern Ireland) 2001;
- (e) child tax credit and working tax credit where such payment is made as a result of change of circumstances.

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

- (a) paid to the relevant person in consequence of damage to or loss of his only or main residence or any personal possession and intended for its repair or replacement; or
- (b) acquired by the relevant person (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvements to his only or main residence, which is to be used for the intended purpose, for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to effect the repairs, replacement or improvement.

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

11. Any sum –

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

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

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

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

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<sup>(158)</sup> Working families' tax credit and disabled person's tax credit were replaced by working tax credit with effect from 6th April 2003

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

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

16. The value of the right to receive any income which is disregarded under paragraph 13 of Schedule 2 or paragraph 24 of Schedule 3.

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

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

19. Any payment made by a Health and Social Services Board under Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995<sup>(159)</sup> (Health and Social Services Boards' duty to promote the welfare of children or powers to grant financial assistance to persons in, or formerly in, their care).

20. Any social fund payment.

21. Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988<sup>(160)</sup> (mortgage interest payment under deduction of tax) on a payment of relevant loan interest for the purpose of acquiring an interest in the only or main residence or carrying out repairs or improvements to that residence.

22. Any capital which by virtue of regulation 31, 33(5) or 47 (annuity treated as income, modifications in respect of child and young person or treatment of student loans) is to be treated as income.

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

24.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), the Fund, the Independent Living (Extension) Fund, the Independent Living (1993) Fund or the Independent Living Fund.

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

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

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

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

<sup>(159)</sup> S.I. 1995/755 (N.I. 2); Article 18 was amended by Article 40(1) of, and paragraph 52(3) of Schedule 2 to, the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)), paragraph 6(k) of Schedule 1 to the Tax Credits Act 1999 (c. 10) and paragraphs 51-53 of Schedule 3 to the Tax Credits Act 2002 (c. 21)

<sup>(160)</sup> 1988 c. 1; section 369(1A) was inserted by section 81(3) of the Finance Act 1994 (c. 9)

- (c) any young person who is a member of that person's family or who was such a member and who is a member of the relevant person's family.
- (4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under any of the Trusts where –
  - (a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child or young person who is or had been a member of that person's family; and
  - (b) the payment is made either –
    - (i) to that person's parent or step-parent, or
    - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,but only for a period from the date of the payment until the end of 2 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, nor any child or young person who was or had been a member of his family; and
  - (b) the payment is made either –
    - (i) to that person's parent or step-parent, or
    - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,but only for a period of 2 years from the relevant date.
- (6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.
- (7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund.

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

(2) In this paragraph "dwelling" includes any premises not so occupied which it is impracticable or unreasonable to sell separately.

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

27. Any payment made under arrangements made by the Department for Social Development to compensate for the loss (in whole or in part) of entitlement to housing benefit.

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

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

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

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

32. £200 of any payment, or if the payment is less than £200, the whole of the payment made under section 1 of the Employment and Training Act (Northern Ireland) 1950 as a training bonus to a person participating in provision or arrangements for training under that Act but only for a period of 52 weeks from the date of receipt of that payment.

33. Any housing benefit.

34. Any arrears of special war widows payment which is disregarded under paragraph 40 of Schedule 3 (sums to be disregarded in the determination of income other than earnings) or of any amount which is disregarded under paragraph 50, 51 or 52 of that Schedule.

35.—(1) Any payment or repayment made under regulation 3, 5 or 8 of the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 1989(**161**) (entitlement to full remission and payment, persons entitled to remission in part or payment in part, or repayment).

(2) Any payment or repayment made by the Department of Health, Social Services and Public Safety which is analogous to a payment or repayment mentioned in sub-paragraph (1).

36. Any payment made under regulation 8, 9, 10 or 12 of the Welfare Foods Regulations (Northern Ireland) 1988(**162**) (failure to receive milk tokens, inability to purchase dried milk at a reduced price, inability to obtain free vitamins or absence of beneficiary for less than a week).

37. Any payment made under a scheme established by the Secretary of State to assist relatives and other persons to visit persons in custody.

38. Any payment (other than a training allowance, or a training bonus paid under section 3(3) of the Employment and Training Act (Northern Ireland) 1950)(**163**) made, whether by the Department for Employment and Learning or any other person, under the Disabled Persons (Employment) Act (Northern Ireland) 1945(**164**) or in accordance with arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950(**165**) to assist disabled persons to obtain or retain employment despite their disability.

39.—(1) Any sum of capital administered –

(a) by the High Court –

(i) on behalf of a person under the provisions of Order 80 of the Rules of the Supreme Court (Northern Ireland) 1980(**166**); or

(ii) on behalf of a patient under the provisions of Order 109 of those Rules(**167**);

(b) by the county court –

(i) under the provisions of Order 44 of the County Court Rules (Northern Ireland) 1981(**168**); or

(ii) under Article 21 of the County Courts (Northern Ireland) Order 1980(**169**).

(**161**) S.R. 1989 No. 348; the relevant amending regulations are S.R. 1990 No. 313 and S.R. 1991 No. 224

(**162**) S.R. 1988 No. 137; the relevant amending regulations are S.R. 1991 No. 81, S.R. 1999 No. 397, S.R. 2001 No. 139, S.R. 2003 No. 202 and S.R. 2003 No. 393

(**163**) 1950 c. 29 (N.I.); section 3 was amended by Article 35 of, and Schedule 4 to, the Industrial Training (Northern Ireland) Order 1984 (S.I. 1984/1159 (N.I. 9))

(**164**) 1945 c. 6 (N.I.); to which there are amendments not relevant to these Regulations

(**165**) Section 1(1) was substituted by Article 3 of the Employment and Training (Amendments) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

(**166**) S.R. 1980 No. 346 as amended by S.R. 1986 No. 184 and S.R. 1996 No. 321

(**167**) Order 109 was amended by S.R. 1986 No. 184 and S.R. 1995 No. 462

(**168**) S.R. 1981 No. 225 as amended by S.R. 1986 No. 218 rule 3 and S.R. 1988 No. 100 rule 2(5)

(**169**) S.I. 1980/397 (N.I. 3)



(2) Paragraph (1) applies to a sum which derives from –

- (a) an award of damages for a personal injury to a person mentioned in that paragraph; or
- (b) compensation for the death of one or both parents of such person where the person concerned is under the age of 18.

40. Any sum of capital administered on behalf of a person by Her Majesty's High Court of Justice in England under the provisions of Order 80 of the Rules of the Supreme Court 1965(170), the county court under Order 10 of the County Court Rules 1981(171), or the Court of Protection, where such sum derives from –

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.

41. Any sum of capital administered on behalf of a person in accordance with an order made under Rule 43.15 of the Act of Sederunt (Rules of the Court of Session 1994) 1994(172) or under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment) 1965(173), or under Rule 36.14 of the Ordinary Cause Rules 1993(174) or under Rule 128 of the Ordinary Cause Rules(175) where such sum derives from –

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.

42. Any payment to the relevant person as a holder of the Victoria Cross or George Cross.

43. Any back to work bonus payable by way of a jobseeker's allowance or income support in accordance with Article 28 of the Jobseekers (Northern Ireland) Order 1995(176) or a corresponding payment under section 26 of the Jobseekers Act 1995(177).

44. Any amount of housing benefit to which a person is entitled by virtue of regulation 7B of the Housing Benefit (General) Regulations (Northern Ireland) 1987(178).

45. Any amount of income support to which a person is entitled by virtue of regulation 21A of the Income Support (General) Regulations (Northern Ireland) 1987(179).

46. Any mandatory top-up payment made to a person pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950(180) in respect of that person's participation in –

- (a) an employment programme specified in –
  - (i) regulation 75(1)(a)(ii)(181) of the Jobseeker's Allowance Regulations (Voluntary Sector Option of the New Deal);
  - (ii) regulation 75(1)(a)(iii) of those Regulations (Environmental Task Force Option of the New Deal) or;

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

(171) S.I. 1981/1687; for Order 10 as currently in force see "The County Court Practice 1996"; ISBN 0-406-06506-3

(172) S.I. 1994/1443

(173) S.I. 1965/321

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

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

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

(177) 1995 c. 18

(178) S.R. 1987 No. 461; regulation 7B was inserted by S.R. 1996 No. 448

(179) S.R. 1987 No. 459; regulation 21A was substituted by S.R. 2000 No. 71

(180) 1950 c. 29 (N.I.); section 1(1) was substituted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and section 1(2) and (3) was substituted by Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(181) Regulation 75 was substituted by regulation 8 of S.R. 1997 No. 541 and amended by S.R. 1998 No. 182 and S.R. 2000 No. 197

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- (b) the Preparation for Employment Programme or in the Preparation for Employment Programme for 50 plus,

but only for the period of 52 weeks from the date of receipt of the payment.

47. Any discretionary payment to meet or help meet special needs made to a person pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950 in respect of that person's participation in the Full-Time Education and Training Option of the New Deal as specified in regulation 75(1)(b)(ii) of the Jobseeker's Allowance Regulations but only for a period of 52 weeks from the date of receipt of the payment.

48. Any discretionary payment made pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950 to meet, or help meet, special needs of a person who is undertaking a qualifying course within the meaning specified in regulation 17A(7)(182) of the Jobseeker's Allowance Regulations but only for a period of 52 weeks from the date of receipt of the payment.

49. Any child care expenses reimbursed to the relevant person in respect of his participation in the Preparation for Employment Programme but only for a period of 52 weeks from the date of receipt of the payment.

50. Any mandatory top-up payment made to a person pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950 in respect of that person's participation in the Preparation for Employment Programme but only for a period of 52 weeks from the date of receipt of the payment.

51.—(1) Any payment of a sports award for a period of 26 weeks from the date of receipt of that payment except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear or household fuel of the relevant person or, where the relevant person is a member of a family, any other member of his family, or any eligible rates or rent to which regulation 9 or 10 of the Housing Benefit (General) Regulations (Northern Ireland) 1987 for which that relevant person or member is liable.

(3) For the purposes of sub-paragraph (2) –

- (a) “food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made;
- (b) “ordinary clothing or footwear” means clothing or footwear for normal daily use but does not include school uniforms or clothing or footwear used solely for sporting activities;
- (c) “rates or rent” means eligible rates or rent to which regulations 9 or 10 of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refer less any deductions in respect of non-dependants which fall to be made under regulation 63 of those Regulations.

52. Where an ex-gratia payment of £10,000 has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or internment of –

- (a) the relevant person;
- (b) the relevant person's partner;
- (c) the relevant person's deceased spouse; or
- (d) the relevant person's partner's deceased spouse;

by the Japanese during the Second World War, £10,000.

(182) Regulation 17A was inserted by regulation 4 of S.R. 1998 No. 198 and amended by S.R. 1998 No. 418 and S.R. 1999 No. 467

53.—(1) Subject to sub-paragraph (2), the amount of any trust payment made to the relevant person or a member of the relevant person's family who is –

- (a) a diagnosed person;
- (b) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;
- (c) a parent of a diagnosed person, a person acting in the place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (d) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) 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;
- (c) a person referred to in sub-paragraph (1)(d), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending –
  - (i) two years after that date; or
  - (ii) on the day before the day on which that person –
    - (aa) ceases receiving full-time education; or
    - (bb) attains the age of 19,whichever is the latest.

(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 the relevant person or a member of a relevant person's family who is –

- (a) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;
- (b) a parent of a diagnosed person, a person acting in the place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (c) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death,

but only to the extent that such payments do not exceed the total amount of any trust payments made to that person.

(4) Where a payment as referred to in sub-paragraph (3) is made to –

- (a) a person referred to in sub-paragraph (3)(a), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (3)(b), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending two years after that date;
- (c) a person referred to in sub-paragraph (3)(c), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending –
  - (i) two years after that date; or

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- (ii) on the day before the day on which that person –
  - (aa) ceases receiving full-time education; or
  - (bb) attains the age of 19,
 whichever is the latest.

(5) In this paragraph, a reference to a person –

- (a) being the diagnosed person's partner;
- (b) being a member of the diagnosed person's family; or
- (c) acting in the 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 being in residential accommodation, a residential care home or a nursing home on that date.

(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;

“residential accommodation”, “residential care home” and “nursing home” shall have the same meanings as for the purposes of the Income Support (General) Regulations (Northern Ireland) 1987<sup>(183)</sup>;

“trust payment” means a payment under a relevant trust.

54. Any ex-gratia payment made by the Secretary of State to members of the families of the disappeared, but only for a period of 52 weeks from the date of receipt of that payment.

55. Any training grant payable under the New Deal 50 Plus Employment Credit Scheme pursuant to arrangements made under section 2(1) of the Employment and Training Act (Northern Ireland) 1950<sup>(184)</sup> but only for a period of 52 weeks from the date of payment.

56. The amount of a payment, other than a war pension within the meaning in section 25 of the Social Security Act 1989 f Ref="f00185"/>, to compensate for the fact that the relevant person, the relevant person's partner, the relevant person's deceased spouse or the relevant person's partner's deceased spouse –

- (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.

<sup>(183)</sup>S.R. 1987 No. 459

<sup>(184)</sup>1950 c. 29 as amended by the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

## SCHEDULE 5

Regulation 52

## REVOCATIONS

<i>Regulations revoked</i>	<i>References</i>
The Housing Renovation, etc. Grants (Reduction of Grant) Regulations (Northern Ireland) 1997	<a href="#">S.R. 1997 No. 456</a>
The Housing Renovation, etc. Grants (Reduction of Grant) (Amendment) Regulations (Northern Ireland) 1998	<a href="#">S.R. 1998 No. 396</a>
The Housing Renovation, etc. Grants (Reduction of Grant) (Amendment) Regulations (Northern Ireland) 1999	<a href="#">S.R. 1999 No. 387</a>
The Housing Renovation, etc. Grants (Reduction of Grant) (Amendment) Regulations (Northern Ireland) 2000	<a href="#">S.R. 2000 No. 62</a>
The Housing Renovation, etc. Grants (Reduction of Grant) (Amendment No. 2) Regulations (Northern Ireland) 2000	<a href="#">S.R. 2000 No. 325</a>
The Housing Renovation, etc. Grants (Reduction of Grant) (Amendment) Regulations (Northern Ireland) 2001	<a href="#">S.R. 2001 No. 315</a>
The Housing Renovation, etc. Grants (Reduction of Grant) (Amendment) Regulations (Northern Ireland) 2003	<a href="#">S.R. 2003 No. 234</a>
The Housing Renovation, etc. Grants (Reduction of Grant) (Amendment No. 2) Regulations (Northern Ireland) 2003	<a href="#">S.R. 2003 No. 282</a>
The Housing Renovation, etc. Grants (Reduction of Grant) (Amendment No. 3) Regulations (Northern Ireland) 2003	<a href="#">S.R. 2003 No. 387</a>

## EXPLANATORY NOTE

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

Article 61 of the Housing (Northern Ireland) Order 2003 provides, inter alia, that where in the case of an application to the Housing Executive for a renovation grant or disabled facilities grant the financial resources of the applicant (or, in the case of an application for disabled facilities grant, the financial resources of any person specified by regulations) exceed the applicable amount, then the amount of any grant which may be paid shall be reduced in accordance with regulations.

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

Article 62 of the Housing (Northern Ireland) Order 2003 provides, inter alia, that in the case of a landlord's application for a renovation grant, common parts grant, disabled facilities grant or HMO grant, information or evidence needed for the determination of any matter under that Article shall be furnished by such persons as may be prescribed in regulations.

Article 73 of the Housing (Northern Ireland) Order 1992 provides, inter alia, that the Housing Executive may pay grant towards the cost of complete replacement of a dwelling in accordance with regulations made by the Department. While Article 47 of the Housing (Northern Ireland) Order 1992 (which contained the power to make reduction of grant regulations) has been repealed for the purposes of renovation and disabled facilities grants, it remains in operation (with modifications) for the purposes of replacement grant.

These Regulations provide for reduction of the amount of renovation grant, disabled facilities grant and replacement grant which may be paid to applicants and for certain financial information to be provided by pension fund holders.

Part I contains general provisions as to the citation, commencement and interpretation of the Regulations (regulations 1 and 2). Regulation 3 provides for the exclusion of persons from abroad, as defined by housing benefit rules, from eligibility for grant. Regulation 4 enables the Housing Executive to require a pension fund holder to provide it with details of deferred income under a personal pension scheme or retirement annuity contract. Regulation 5 requires that relevant persons must provide details of their national insurance numbers. Regulations 6 and 7 define a relevant person and a non-dependant and regulation 8 makes provision in regard to the circumstances in which a person is to be treated as engaged in remunerative work. Regulations 9 and 10 make provision in regard to the circumstances in which a person is or is not to be treated as responsible for another person and in which a person is or is not to be treated as being a member of the same household as a relevant person, ie, a person whose financial resources are to be taken into account in determining whether the amount of the grant is to be reduced and, if so, by how much. Regulations 11 and 12 set out what comprises the applicable amount and the amount to be taken to be the financial resources in respect of an application, by reference to which any reduction in the amount of grant is determined.

Part II specifies the method of assessing the amount by which a grant is to be reduced in various circumstances (regulations 13 and 14).

Part III and Schedule 1 provide for the determination of the applicable amount of a relevant person, and with respect to polygamous marriages (regulations 15 and 16).

Part IV (regulations 17 to 41) provides for the determination of the income and capital of a relevant person, the earnings of employed and self-employed earners and the treatment of income other than earnings (including notional income); sums to be disregarded are set out in Schedules 2 and 3. Capital to be disregarded is set out in Schedule 4.

Part V provides for the treatment of students (regulations 42 to 51).

Part VI revokes the grants regulations made under the Housing (Northern Ireland) Order 1992.