STATUTORY RULES OF NORTHERN IRELAND

2006 No. 405

HOUSING; RATES

The Housing Benefit Regulations (Northern Ireland) 2006

Made - - - -	*12th October 2006*
Coming into operation	*20th November 2006*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 122(1)(d), 129(2), (3) and (4), 130, 131(1), (2) and (6), 132, 133, 171(1) and (3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**), sections 1(1) and (1C), 5(1)(a) to (d) and (g) to (t) and (5), 73, 107, 119A, 126(4) and (5) and 165(1) and (4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(**2**) and Articles 34 and 74(1) and (3) of the Social Security (Northern Ireland) Order 1998(**3**) and now vested in it(**4**).

The Regulations are made with the consent of the Department of Finance and Personnel(**5**).

(**1**) 1992 c. 7; section 129(2) was amended by Article 8(2) of the Housing Support Services (Northern Ireland) Order 2002 (S.I. 2002/3154 (N.I. 8)); in section 133(1) the definition of "family" was amended by paragraph 99(2) of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)

(**2**) 1992 c. 8; section 1(1C) was inserted by Article 18 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997 (S.I. 1997/1182 (N.I. 11)); in section 5 subsection (1) was amended by Article 3(1) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)) and Article 70 of, and Schedule 7 to, the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and subsection (5) was inserted by Article 3(1) of the Housing Benefit (Payment to Third Parties) (Northern Ireland) Order 1996 (S.I. 1996/2597 (N.I. 20)); section 73 was amended by Article 15 of, and paragraph 2 of Schedule 1 and Schedule 2 to, the Social Security Administration (Fraud) (Northern Ireland) Order 1997 and section 62 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)); section 107 was substituted by Article 56 of the Social Security (Northern Ireland) Order 1998 and amended by paragraph 5 of Schedule 4 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 7 of Schedule 6 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; section 119A was inserted by Article 10 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997 and in section 165 subsection (1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and subsection (6) was amended by Schedule 7 to the Social Security (Northern Ireland) Order 1998

(**3**) S.I. 1998/1506 (N.I. 10); Article 34 was amended by Schedule 9 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and paragraph 30 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)) and Article 74(1) was amended by paragraph 17(2) of Schedule 4 to the Tax Credits Act 2002

(**4**) S*ee* Article 8(b) of S.R. 1999 No. 481

(**5**) *See* section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993; *see also* Article 6(b) of S.R. 1999 No. 481

PART I

General

Citation and commencement

1.—(1) These Regulations may be cited as the Housing Benefit Regulations (Northern Ireland) 2006 and shall come into operation on 20th November 2006.

(2) These Regulations are to be read, where appropriate, with the Consequential Provisions Regulations and, in a case where regulation 5(2) applies, with the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(**6**).

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

Interpretation

2.—(1) In these Regulations—

"the 1950 Act" means the Employment and Training Act (Northern Ireland) 1950(**7**);

"the Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

"the Administration Act" means the Social Security Administration (Northern Ireland) Act 1992;

"the Children Order" means the Children (Northern Ireland) Order 1995(**8**);

"the Employment Rights Order" means the Employment Rights (Northern Ireland) Order 1996(**9**);

"the Fraud Act" means the Social Security Fraud Act (Northern Ireland) 2001(**10**);

"the Health and Personal Social Services Order" means the Health and Personal Social Services (Northern Ireland) Order 1972 (**11**);

"the Immigration and Asylum Act" means the Immigration and Asylum Act 1999(**12**);

"the Jobseekers Order" means the Jobseekers (Northern Ireland) Order 1995(**13**);

"the Quality, Improvement and Regulation Order" means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(**14**);

"the Tax Credits Act" means the Tax Credits Act 2002(**15**);

"the Taxes Act" means the Income and Corporation Taxes Act 1988(**16**);

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

"adoption leave" means a period of absence from work on ordinary or additional adoption leave by virtue of Article 107A or 107B of the Employment Rights Order(**17**);

(**6**) S.R. 2006 No. 406
(**7**) 1950 c. 29 (N.I.)
(**8**) S.I. 1995/755 (N.I. 2)
(**9**) S.I. 1996/1919 (N.I. 16)
(**10**) 2001 c. 17 (N.I.)
(**11**) S.I. 1972/1265 (N.I. 14)
(**12**) 1999 c. 33
(**13**) S.I. 1995/2705 (N.I. 15)
(**14**) S.I. 2003/431 (N.I. 9)
(**15**) 2002 c. 21
(**16**) 1988 c. 1
(**17**) Articles 107A and 107B were inserted by Article 3 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

"appropriate office" means an office of the Department dealing with state pension credit or an office which is normally open to the public for the receipt of claims for income support and jobseeker's allowance;

"assessment period" means such period as is prescribed in regulations 26 to 28 over which income falls to be calculated;

"attendance allowance" means—

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

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

(c) a payment under regulations made in exercise of the power conferred by paragraph 4(2)(b) of Schedule 8 to the Act;

(d) a payment analogous to a payment by way of an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Schedule 8 to the Social Security Contributions and Benefits Act 1992(**18**);

(e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(**19**) or any analogous payment; or

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

"the benefit Acts" means the Act and the Jobseekers Order;

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

"child" means a person under the age of 16;

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

"claim" means a claim for housing benefit;

"claimant" means a person claiming housing benefit;

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

"community charge benefit" means community charge benefits under Part VII of the Social Security Contributions and Benefits Act 1992(**20**) as originally enacted;

"concessionary payment" means a payment made under arrangements made by the Department 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 Act are charged;

"the Consequential Provisions Regulations" means the Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006(**21**);

"couple" means—

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

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

(c) 2 people of the same sex who are civil partners of each other and are members of the same household; or

(**18**) 1992 c. 4
(**19**) S.I. 1983/686; relevant amending Instruments are S.I. 1984/1675 and S.I. 2001/420
(**20**) Part VII was amended by section 103 of, and Schedule 9 to, the Local Government Finance Act 1992 (c. 14) which replaced references to community charge benefit with references to council tax benefit
(**21**) S.R. 2006 No. 407

(d) 2 people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of paragraph (d), 2 people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead 2 people of the opposite sex;

"course of study" has the meaning prescribed in regulation 50;

"date of claim" means the date on which the claim is made, or treated as made, for the purposes of regulation 81;

"the Decisions and Appeals Regulations" means the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(**22**);

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

(a) by notice upon or with a form approved by it for the purpose of claiming housing benefit;

(b) by reference upon or with such a form to some other document available from it and sent by electronic means or otherwise on application and without charge; or

(c) by any combination of the provisions set out in paragraphs (a) and (b);

"disability living allowance" means a disability living allowance under section 71 of the Act(**23**);

"dwelling occupied as the home" means the dwelling together with any garage, garden and outbuildings normally occupied by the claimant as his home, including any part thereof not so occupied which it is impracticable or unreasonable to sell separately, together with—

(a) any agricultural land adjoining that dwelling; and

(b) any land not adjoining that dwelling which it is impracticable or unreasonable to sell separately;

"earnings" has the meaning prescribed in regulation 32 or, as the case may be, 34;

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

"eligible rates" is to be construed in accordance with regulation 12;

"eligible rent" is to be construed in accordance with regulation 13;

"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 general earnings and also includes a person who is in receipt of a payment which is payable under any statute of the Parliament of the United Kingdom extending solely to Great Britain and which corresponds to statutory sick pay or statutory maternity pay;

"the Executive" means the Northern Ireland Housing Executive;

"extended payment" means a payment of housing benefit pursuant to regulation 70;

"extended payment (severe disablement allowance and incapacity benefit)" means a payment of housing benefit pursuant to regulation 71;

"family" has the meaning assigned to it by section 133(1) of the Act;

(**22**) S.R. 2001 No. 213

(**23**) Section 71 was amended by Article 64(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

"the former Regulations" means the Housing Benefit (General) Regulations (Northern Ireland) 1987(**24**);

"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;

"a guaranteed income payment" means a payment made under article 14(1)(b) or 21(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(**25**);

"Health and Social Services Board" means a Board established under Article 16 of the Health and Personal Social Services Order;

"HSS trust" means a Health and Social Services trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(**26**), by which functions are exercisable by virtue of an authorisation for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994(**27**);

"hostel" means a building—

(a) in which there is provided for persons generally or for a class of persons, domestic accommodation, otherwise than in separate and self-contained premises, and either board or facilities for the preparation of food adequate to the needs of those persons, or both;

(b) which is—

  (i) managed or owned by a registered housing association;

  (ii) operated other than on a commercial basis and in respect of which funds are provided wholly or in part by a government department or agency, the Executive or a Health and Social Services Board or HSS trust, or

  (iii) managed by a voluntary organisation or charity and provides care, support or supervision with a view to assisting those persons to be rehabilitated or resettled within the community; and

(c) which is not—

  (i) a residential care home;

  (ii) a nursing home;

  (iii) an independent hospital, or

  (iv) an Abbeyfield Home;

"housing association" has the meaning assigned to it by Article 3 of the Housing (Northern Ireland) Order 1992(**28**);

"an income-based jobseeker's allowance" has the same meaning as it has in the Jobseekers Order by virtue of Article 3(4) of that Order(**29**);

"the Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 1987(**30**);

"independent hospital" has the meaning assigned to it by Article 2(2) of the Quality, Improvement and Regulation Order;

(**24**) S.R. 1987 No. 461
(**25**) S.I. 2005/439
(**26**) S.I. 1991/194 (N.I. 1)
(**27**) S.I. 1994/429 (N.I. 2)
(**28**) S.I. 1992 /1725 (N.I. 15)
(**29**) The definition of "an income-based jobseeker's allowance" was amended by paragraph 3(4)(a) of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999
(**30**) S.R. 1987 No. 459

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

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

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

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

"the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations (Northern Ireland) 1996(**31**);

"a joint-claim jobseeker's allowance" has the same meaning as it has in the Jobseekers Order by virtue of Article 3(4) of that Order(**32**);

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

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

"lower rate" where it relates to rates of tax has the same meaning as in the Taxes Act(**33**) by virtue of section 832(1) of that Act;

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

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

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

"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 Order(**34**);

"maximum rent" means the amount to which the eligible rent is restricted in a case where regulation14 applies;

(**31**) S.R. 1996 No. 198

(**32**) The definition of "a joint-claim jobseeker's allowance" was inserted by paragraph 3(4)(b) of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(**33**) The definition of "lower rate" was inserted by section 9(9) of the Finance Act 1992 (c. 20)

(**34**) Part IX was substituted by Part I of Schedule 4 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)) and amended by Article 14 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

"mover" means a claimant who changes the dwelling which he occupies as his home in respect of which he is liable or treated as liable to make payments;

"net earnings" means such earnings as are calculated in accordance with regulation 33;

"net profit" means such profit as is calculated in accordance with regulation 35;

"non-dependant" has the meaning prescribed in regulation 3;

"non-dependant deduction" means a deduction that is to be made under regulation 72;

"nursing home" has the meaning it has for the purposes of the Quality, Improvement and Regulation Order by virtue of Article 11 of that Order;

"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;

"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;

"owner" means the person who, otherwise than as a mortgagee in possession, is for the time being entitled to dispose of the fee simple or leasehold interest of any rateable unit, whether or not with the consent of other joint owners;

"partner" means—

(a) where a claimant is a member of a couple, the other member of that couple; or

(b) where a claimant is polygamously married to 2 or more members of his household, any such member;

"paternity leave" means a period of absence from work on leave by virtue of Article 112A or 112B of the Employment Rights Order(**35**);

"payment" includes part of a payment;

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

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

"person on income support" means a person in receipt of income support;

"personal pension scheme" has the same meaning as in section 1 of the Pension Schemes (Northern Ireland) Act 1993(**36**) and, in the case of a self-employed earner, includes a scheme approved by the Commissioners for Her Majesty's Revenue and Customs under Chapter IV of Part XIV of the Taxes Act;

"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;

(**35**) Articles 112A and 112B were inserted by Article 4 of the Employment (Northern Ireland) Order 2002; *see*S.R. 2003 No. 220 in relation to the application of Article 112B to adoptions from overseas

(**36**) 1993 c. 49

"Preparation for Employment Programme for 50 plus" means the programme known by that name and provided in pursuance of arrangements made under section 1 of the 1950 Act(**37**), being a programme lasting for up to 52 weeks for any one individual aged 50 years or over on the day that he first joined any such programme, and consisting for that individual of any one or more of the following elements, namely employed earner's employment, assistance in pursuing self-employed earner's employment, education and training, work experience, assistance with job search, motivation and skills training;

"the qualifying age for state pension credit" means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act (Northern Ireland) 2002(**38**))—

(a) in the case of a woman, pensionable age; or

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

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

"rateable unit" means a hereditament as defined in Article 2(2) of the Rates (Northern Ireland) Order 1977;

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

"relevant authority" means an authority administering housing benefit;

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

"rent" includes all those payments in respect of a dwelling specified in regulation 13(1);

"residential care home" has the meaning it has for the purposes of the Quality, Improvement and Regulation Order by virtue of Article 10 of that Order;

"retirement annuity contract" means a contract or trust scheme approved under Chapter III of Part XIV of the Taxes Act;

"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);

"self-employment route" means assistance in pursuing self-employed earner's employment whilst participating in a programme provided or other arrangements made pursuant to section 1 of the 1950 Act (general functions of Department as to employment and training for employment);

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

"the Skipton Fund" means the ex-gratia payment scheme administered by the Skipton Fund Limited, incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme's provisions;

"sports award" means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993(**39**) out of sums allocated to it for distribution under that section;

"student" has the meaning prescribed in regulation 50;

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

(**37**) Section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(**38**) 2002 c. 14 (N.I.)

(**39**) 1993 c. 39

"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(**40**);

(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 sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(**41**) or made under section 1(1) of the 1950 Act, or is training as a teacher;

"voluntary organisation" means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association;

"war widower's pension" means any widower's or surviving civil partner'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(**42**), the Personal Injuries (Emergency Provisions) Act 1939(**43**), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(**44**), the Polish Resettlement Act 1947(**45**) or Part VII or section 151 of the Reserve Forces Act 1980(**46**) or a pension or allowance for a widower or surviving civil partner granted under any scheme mentioned in section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003(**47**);

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

"the Working Tax Credit Regulations" means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(**48**);

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

(a) whose landlord is a registered housing association;

(b) who has not attained the age of 22 years and has ceased to be the subject of a care order made pursuant to Article 50(1)(a) of the Children Order which had previously been made in respect to him either—

  (i) after he attained the age of 16 years, or

  (ii) before he attained the age of 16 years, but had continued after he attained that age; or

(c) who has not attained the age of 22 years and was formerly provided with accommodation under Article 21 of the Children Order;

(**40**) S*ee* Article 4(b) of S.R. 1999 No. 481 and section 1 of the Department for Employment and Learning Act (Northern Ireland) 2001 (c. 15 (N.I.))
(**41**) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))
(**42**) 1917 c. 51
(**43**) 1939 c. 82
(**44**) 1939 c. 83
(**45**) 1947 c. 19
(**46**) 1980 c. 9
(**47**) 2003 c. 1
(**48**) S.I. 2002/2005

"young person" has the meaning prescribed in regulation 17(1).

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

(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 or 22A of the Jobseekers Order (circumstances in which a jobseeker's allowance is not payable);

(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 or would be payable to him but for Article 21 or 22A of that Order;

(c) in respect of which he is a member of a joint-claim couple for the purposes of the Jobseekers Order and no joint-claim jobseeker's allowance is payable in respect of that couple as a consequence of either member of that couple being subject to sanctions for the purposes of Article 22A of that Order; or

(d) in respect of which an income-based jobseeker's allowance or a joint-claim jobseeker's allowance would be payable but for a restriction imposed pursuant to section 6, 7 or 8 of the Fraud Act(**49**) (loss of benefit provisions).

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

(a) subject to sub-paragraphs (b) and (c), any land (whether or not occupied by a structure) which is used for the purposes of occupying a dwelling as a home where either—

(i) the occupier of the dwelling acquired simultaneously the right to use the land and the right to occupy the dwelling, and, in the case of a person liable to pay rent for his dwelling, he could not have occupied that dwelling without also acquiring the right to use the land, or

(ii) the occupier of the dwelling has made or is making all reasonable efforts to terminate his liability to make payments in respect of the land;

(b) where the dwelling is a caravan or mobile home, such of the land on which it stands as is used for the purposes of the dwelling;

(c) where the dwelling is a houseboat, the land used for the purposes of mooring it.

(5) Subject to paragraphs (6) and (7), the Interpretation Act (Northern Ireland) 1954(**50**) shall apply to these Regulations as it applies to an Act of the Assembly.

(6) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

(7) Without prejudice to any other method of service authorised under section 24 of the Interpretation Act (Northern Ireland) 1954, the requirement to send any document under these Regulations may be met by sending it by ordinary post.

(**49**) Section 6 was amended by Schedule 6 to the Tax Credits Act 2002 and paragraph 33 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 and section 8 was amended by paragraph 34 of that Schedule

(**50**) 1954 c. 33 (N.I.)

Definition of non-dependant

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

(2) This paragraph applies to—

(a) any member of the claimant's family;

(b) if the claimant is polygamously married, any partner of his and any child or young person who is a member of his household and for whom he or one of his partners is responsible;

(c) a child or young person who is living with the claimant but who is not a member of his household by virtue of regulation 19;

(d) subject to paragraph (3), a person who jointly occupies the claimant's dwelling and is either a co-owner of that dwelling with the claimant or his partner (whether or not there are other co-owners) or is liable with the claimant or his partner to make payments in respect of his occupation of the dwelling;

(e) subject to paragraph (3)—

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

(ii) any person to whom or to whose partner the claimant or the claimant's partner is liable to make payments on a commercial basis in respect of the occupation of the dwelling, or

(iii) any other member of the household of the person to whom or to whose partner the claimant or the claimant's partner is liable to make payments on a commercial basis in respect of the occupation of the dwelling;

(f) a person who lives with the claimant in order to care for him or a partner of his and who is engaged by a charitable or voluntary organisation which makes a charge to the claimant or his partner for the services provided by that person.

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

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

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

4. Section 1(1A) of the Administration Act(**51**) (requirement to state national insurance number) shall not apply—

(a) to a claim for housing benefit where the person making the claim, or in respect of whom the claim is made, is liable to make payments in respect of a dwelling which is a hostel; or

(b) to any child or young person in respect of whom housing benefit is claimed.

Persons who have attained the qualifying age for state pension credit

5.—(1) These Regulations apply to a person who—

(a) has not attained the qualifying age for state pension credit; or

(**51**) Subsection (1A) was inserted by Article 18 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997

(b) has attained the qualifying age for state pension credit if he, or if he has a partner, his partner, is a person on income support or on an income-based jobseeker's allowance.

(2) Regulation 70 and Schedule 8 (extended payments) apply to a person if he, or if he has a partner, his partner, has attained the qualifying age for state pension credit.

(3) Except as provided in paragraphs (1) and (2), these Regulations shall not apply in relation to any person if he, or if he has a partner, his partner, has attained the qualifying age for state pension credit.

Remunerative work

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

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

(a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does no work, those periods but disregarding any other absences);

(b) in any other case, the period of 5 weeks immediately prior to the date of claim, or such other length of time as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

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

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

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

(6) A person on income support or an income-based jobseeker's allowance for more than 3 days in any benefit week shall be treated as not being in remunerative work in that week.

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

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

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

(b) no other payment is made or is expected to be made to him.

PART II

Provisions affecting entitlement to housing benefit

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

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

(a) by himself or, if he is a member of a family, by himself and his family; or

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

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

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

(3) Where a single claimant or a lone parent is a student, other than one to whom regulation 53(1) applies, or is on a training course and is liable to make payments (including payments of mortgage interest or analogous payments) in respect of either (but not both) the dwelling which he occupies for the purpose of attending his course of study or, his training course, or as the case may be, the dwelling which he occupies when not attending his course, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make such payments.

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

(5) Where a person is required by a court to reside in a dwelling which is a hostel, he shall not be treated as occupying that dwelling as his home.

(6) Where a person is liable to make payments in respect of 2 (but not more than 2) dwellings, he shall be treated as occupying both dwellings as his home only—

(a) for a period not exceeding 52 weeks in the case where he has left and remains absent from the former dwelling occupied as his home through fear of violence in that dwelling or by a former member of his family and—

(i) it is reasonable that housing benefit should be paid in respect of both his former dwelling and his present dwelling occupied as the home, and

(ii) he intends to return to occupy the former dwelling as his home;

(b) in the case of a couple or a member of a polygamous marriage, where he or one partner is a student, other than one to whom regulation 53(1) applies, or is on a training course and it is unavoidable that the partners should occupy 2 separate dwellings and reasonable that housing benefit should be paid in respect of both dwellings;

(c) in the case where, because of the number of persons referred to in paragraph (1), they have been housed by the Executive in 2 separate dwellings;

(d) in the case where a person has moved into a new dwelling occupied as the home, except where paragraph (4) applies, for a period not exceeding 4 benefit weeks if he could not reasonably have avoided liability in respect of 2 dwellings; or

(e) in the case where a person—

(i) is treated by virtue of paragraph (8) as occupying a dwelling as his home ("the new dwelling") and sub-paragraph (c)(i) of that paragraph applies, and

(ii) he has occupied another dwelling as his home on any day within the period of 4 weeks immediately preceding the date he moved to the new dwelling,

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

(7) Where—

(a) a person has moved into a dwelling for which he is not liable to make payments ("the new dwelling");

(b) immediately before that move, he was liable to make payments for the dwelling he previously occupied as his home ("the former dwelling"); and

(c) that liability continues after he has moved into the new dwelling,

he shall be treated as occupying the former dwelling as his home for a period not exceeding 4 benefit weeks if he could not reasonably have avoided liability in respect of that former dwelling.

(8) Where a person—

(a) has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in;

(b) had claimed housing benefit before moving in and either no decision has yet been made on that claim or it has been refused but a further claim has been made or treated as made within 4 weeks of the date on which the claimant moved into the new dwelling occupied as the home; and

(c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and—

(i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of that person or any member of his family;

(ii) the move was delayed pending the outcome of an application under Part VIII of the Act for a social fund payment to meet a need arising out of the move or in connection with setting up the home in the dwelling and either a member of the claimant's family is aged 5 or under or the claimant's applicable amount includes a premium under paragraph 9, 10, 11, 12, 14 or 16 of Schedule 4, or

(iii) the claimant became liable to make payments in respect of the dwelling while he was a patient or in residential accommodation,

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

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

(a) in the case of a claim in respect of which a decision has not yet been made the date that claim was or was treated as made in accordance with regulation 81;

(b) in the case of a claim for housing benefit in respect of that dwelling which has been refused and a further claim was or was treated as made in accordance with Part X within 4 weeks of the date on which he moved into the dwelling, the date on which the claim was refused or was treated as made; or

(c) the date from which he is treated by virtue of paragraph (8) as occupying the dwelling as his home,

whichever of those dates is the later.

(10) Where a person to whom neither paragraph (6)(a) or (16)(c)(x) applies—

(a) formerly occupied a dwelling but has left and remains absent from it through fear of violence—

(i) in the dwelling, or

(ii) by a person who was formerly a member of the family of the person first mentioned; and

(b) has a liability to make payments in respect of that dwelling which is unavoidable,

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

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

(a) for the purpose of ascertaining whether the accommodation suits his needs;

(b) with the intention of returning to the dwelling which is normally occupied by him as his home should, in the event, the residential accommodation prove not to suit his needs; and

(c) while the part of the dwelling which is normally occupied by him as his home is not let, or as the case may be, sublet.

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

(13) Subject to paragraph (17), a person shall be treated as occupying a dwelling as his home while he is temporarily absent therefrom for a period not exceeding 13 weeks beginning from the first day of that absence from the home only if—

(a) he intends to return to occupy the dwelling as his home;

(b) the part of the dwelling normally occupied by him has not been let or, as the case may be, sublet; and

(c) the period of absence is unlikely to exceed 13 weeks.

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

(a) detained in custody pending sentence upon conviction or under a sentence imposed by a court, other than a person who is detained in hospital under the provisions of the Mental Health (Northern Ireland) Order 1986(**52**); and

(b) on temporary release from such detention in accordance with Rules made under the provisions of the Prison Act (Northern Ireland)1953(**53**).

(15) Where paragraph (14) applies to a person, then, for any day when he is on temporary release—

(a) if such temporary release was immediately preceded by a period of temporary absence under paragraph (13) or (16), he shall be treated as if he continues to be absent from the dwelling, despite any occupation of the dwelling;

(b) for the purposes of paragraph (16)(c)(i), he shall be treated as if he remains in detention; and

(c) if he does not fall within sub-paragraph (a), he shall be treated as if he does not occupy his dwelling as his home despite any such occupation of the dwelling.

(**52**) S.I. 1986/595 (N.I. 4)
(**53**) 1953 c. 18 (N.I.)

(16) This paragraph shall apply to a person who is temporarily absent from the dwelling he normally occupies as his home ("absence"), if—

(a) he intends to return to occupy the dwelling as his home;

(b) while the part of the dwelling which is normally occupied by him has not been let or, as the case may be, sublet;

(c) he is—

(i) detained in custody on remand pending trial or, as a condition of bail, required to reside in a dwelling, other than the dwelling he occupies as his home or, detained pending sentence upon conviction;

(ii) resident in a hospital or similar institution as a patient;

(iii) undergoing, or as the case may be, his partner or his dependent child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;

(iv) following, in the United Kingdom or elsewhere, a training course;

(v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere;

(vi) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;

(vii) a person who is, in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;

(viii) a student to whom paragraph (3) or (6)(b) does not apply;

(ix) a person who is receiving care provided in residential accommodation other than a person to whom paragraph (11) applies, or

(x) a person who has left the dwelling he occupies as his home through fear of violence, in that dwelling, or by a person who was formerly a member of the family of the person first mentioned, and to whom paragraph (6)(a) does not apply; and

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

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

(18) In this regulation—

"medically approved" means certified by a medical practitioner;

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

"residential accommodation" means accommodation which is provided in—

(a) a residential care home;

(b) a nursing home;

(c) an independent hospital;

(d) an Abbeyfield Home; or

(e) an establishment managed or provided by a body incorporated by Royal Charter or constituted by a statutory provision;

"training course" means a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, a government department.

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

8.—(1) Subject to regulation 9, the following persons shall be treated as if they were liable to make payments in respect of a dwelling—

(a) the person who is liable to make those payments;

(b) a person who is a partner of the person to whom sub-paragraph (a) applies;

(c) a person who has to make the payments if he is to continue to live in the home because the person liable to make them is not doing so and either—

(i) he was formerly a partner of the person who is so liable, or

(ii) he is some other person whom it is reasonable to treat as liable to make the payments;

(d) a person whose liability to make such payments is waived by his landlord as reasonable compensation in return for works actually carried out by the tenant in carrying out reasonable repairs or redecoration which the landlord would otherwise have carried out or be required to carry out but this sub-paragraph shall apply only for a maximum of 8 benefit weeks in respect of any one waiver of liability;

(e) a person who is a partner of a student to whom regulation 53(1) applies.

(2) A person shall be treated as liable to make a payment in respect of a dwelling for the whole of the period in, or in respect of, which the payment is to be made notwithstanding that the liability is discharged in whole or in part either before or during that period and, where the amount which a person is liable to pay in respect of a period is varied either during or after that period, he shall, subject to regulations 77 to 79, be treated as liable to pay the amount as so varied during the whole of that period.

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

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

(a) the tenancy or other agreement pursuant to which he occupies the dwelling is not on a commercial basis;

(b) his liability under the agreement is to a person who also resides in the dwelling and who is a close relative of his or of his partner;

(c) his liability under the agreement is—

(i) to his former partner and is in respect of a dwelling which he and his former partner occupied before they ceased to be partners, or

(ii) to his partner's former partner and is in respect of a dwelling which his partner and his partner's former partner occupied before they ceased to be partners;

(d) he is responsible, or his partner is responsible, for a child of the person to whom he is liable under the agreement;

(e) subject to paragraph (3), his liability under the agreement is to a company or a trustee of a trust of which—

(i) he or his partner;

(ii) his or his partner's close relative who resides with him, or

(iii) his or his partner's former partner,

is, in the case of a company, a director or an employee, or, in the case of a trust, a trustee or a beneficiary;

(f) his liability under the agreement is to a trustee of a trust of which his or his partner's child is a beneficiary;

(g) subject to paragraph (3), before the liability was created, he was a non-dependant of someone who resided, and continues to reside, in the dwelling;

(h) he previously owned, or his partner previously owned, the dwelling in respect of which the liability arises and less than 5 years have elapsed since he or, as the case may be, his partner, ceased to own the property, save that this sub-paragraph shall not apply where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing ownership;

(i) his occupation, or his partner's occupation, of the dwelling is a condition of his or his partner's employment by the landlord;

(j) he is a member of, and is wholly maintained (disregarding any liability he may have to make payments in respect of the dwelling he occupies as his home) by, a religious order;

(k) he is in residential accommodation;

(l) in a case to which the preceding sub-paragraphs do not apply, the appropriate authority is satisfied that the liability was created to take advantage of the housing benefit scheme established under Part VII of the Act.

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

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

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

(a) a residential care home;

(b) a nursing home; or

(c) an independent hospital.

Persons from abroad

10.—(1) A person from abroad who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 10A (entitlement of a refugee to housing benefit) and Schedule A1(**54**) (treatment of claims for housing benefit by refugees) apply.

(2) In paragraph (1), "person from abroad" means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (4).

(**54**) *See*, for regulation 10A and Schedule A1, paragraph 2(1) and (2) of Schedule 4 to S.R. 2006 No. 407

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

(a) regulation 13 of the Immigration (European Economic Area) Regulations 2006(**55**);

(b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—

(i) a jobseeker for the purpose of the definition of "qualified person" in regulation 6(1) of those Regulations, or

(ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;

(c) Article 6 of Council Directive No. 2004/38/EC(**56**); or

(d) Article 39 of the Treaty establishing the European Community (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).

(5) A person is not a person from abroad if he is—

(a) a worker for the purposes of Council Directive No. 2004/38/EC;

(b) a self-employed person for the purposes of that Directive;

(c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;

(d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;

(e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;

(f) a person who is an accession State worker requiring registration who is treated as a worker for the purpose of the definition of "qualified person" in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(**57**);

(g) a refugee;

(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(**58**);

(i) a person who has humanitarian protection granted under those rules;

(j) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;

(k) a person in Northern Ireland who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption; or

(l) in receipt of income support or a person on an income-based jobseeker's allowance.

(6) Paragraph 1 of Part I of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000(**59**) shall not apply to a person who has been temporarily without funds for any period,

(**55**) S.I. 2006/1003
(**56**) O.J. No. L158, 30.4.04, p.77
(**57**) S.I. 2004/1219; regulation 5 was substituted by Schedule 5 to S.I. 2006/1003
(**58**) 1971 c. 77
(**59**) S.R. 2000 No. 71

or the aggregate of any periods, exceeding 42 days during any one period of limited leave (including any such period as extended).

(7) In this regulation "refugee" means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees(**60**).

PART III

Payments in respect of a dwelling

Eligible housing costs

11.—(1) Subject to the following provisions of this regulation, housing benefit shall be payable in respect of the payments specified in regulations 12(1) and 13(1) and a claimant's maximum housing benefit shall be calculated under Part VIII by reference to—

(a) in the case of a rate rebate, the amount of his eligible rates determined in accordance with regulation 12(3); and

(b) in the case of a rent rebate or allowance, the amount of his eligible rent determined in accordance with regulations 13(3) and (7) and 14.

(2) Subject to paragraph (4), housing benefit shall not be payable in respect of payments made by a person on income support or an income-based jobseeker's allowance whose applicable amount for that benefit includes an amount in respect of those payments.

(3) Where any payment for which a person is liable in respect of a dwelling and which is specified in regulation 13(1), is increased on account of—

(a) outstanding arrears of any payment or charge; or

(b) any other unpaid payment or charge,

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

(4) Where a person who has been awarded housing benefit in respect of a dwelling becomes entitled to income support or an income-based jobseeker's allowance and his applicable amount for the purpose of calculating his entitlement to that benefit includes an amount in respect of a payment made by him in respect of that dwelling, the payments made by him in respect of that dwelling shall continue to be eligible for housing benefit for a period of 4 benefit weeks beginning with the benefit week after the date on which he becomes entitled to income support or an income-based jobseeker's allowance.

Rates

12.—(1) The payments in respect of which housing benefit is payable in the form of a rate rebate are the payments by way of rates in respect of the dwelling which a person occupies as his home.

(2) Where the person is liable to make payments only of such a kind as are specified in regulation 13(1) in respect of the dwelling which he occupies as his home and which comprises part only of a rateable unit, the proportion of those payments equal to the proportion of the rates payable in respect of the rateable unit as a whole which appears to the appropriate authority to be referable to his dwelling shall be treated as payments by way of rates for the purposes of paragraph (1).

(**60**) Cmd. 9171

(3) Subject to any apportionment in accordance with paragraphs (4) and (5) the amount of a person's eligible rates shall be the amount of the payments by way of rates referred to in paragraph (1), or, as the case may be, (2).

(4) Where a rateable unit consists partly of residential accommodation and partly of other accommodation, only such proportion of the rates payable for that rateable unit as is referable to the residential accommodation shall count as eligible rates for the purpose of these Regulations.

(5) Subject to paragraph (6), where more than one person is liable to make payments by way of rates in respect of a dwelling, the rates payable in respect of that dwelling shall be apportioned for the purposes of calculating the eligible rates for each such person having regard to all the circumstances, in particular the number of such persons and the proportion of rates paid by each such person.

(6) Paragraph (5) shall not apply to any person so residing with the claimant who is a student to whom regulation 53(1) applies.

Rent

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

(a) payments of, or by way of, rent;

(b) payments in respect of a licence or permission to occupy the dwelling;

(c) payments by way of mesne profits;

(d) payments in respect of, or in consequence of, use and occupation of the dwelling;

(e) payments of, or by way of, service charges payment of which is a condition on which the right to occupy the dwelling depends;

(f) mooring charges payable for a houseboat;

(g) where the home is a caravan or a mobile home, payments in respect of the site on which it stands; and

(h) payments under a rental purchase agreement, that is to say an agreement for the purchase of a dwelling which is a building or part of one under which the whole or part of the purchase price is to be paid in more than one instalment and the completion of the purchase is deferred until the whole or a specified part of the purchase price has been paid.

(2) A rent rebate or, as the case may be, a rent allowance shall not be payable in respect of the following periodical payments—

(a) payments by an owner;

(b) payments under a hire purchase, credit sale or conditional sale agreement except to the extent the conditional sale agreement is in respect of land; and

(c) payments by a person who is eligible for a rent rebate or allowance under a scheme operated by the Ministry of Defence.

(3) Subject to paragraphs (4), (5) and (7), the amount of a person's eligible rent shall be—

(a) the maximum rent where a maximum rent has been, or falls to be, determined in accordance with regulation 14;

(b) except where sub-paragraph (a) applies, the aggregate of such payments specified in paragraph (1) as that person is liable to pay less—

(i) except where he is separately liable for rates, an amount determined in accordance with paragraph (6);

(ii) where payments include service charges which are wholly or partly ineligible, an amount in respect of the ineligible charges determined in accordance with Schedule 1, and

(iii) where he is liable to make payments in respect of any service charges to which paragraph (1)(e) does not apply, but to which paragraph 3(2) of Schedule 1 applies in the particular circumstances, an amount in respect of such charges determined in accordance with paragraph 3(2) of Schedule 1.

(4) Where the payments specified in paragraph (1) are payable in respect of accommodation which consists partly of residential accommodation and partly of other accommodation, only such proportion thereof as is referable to the residential accommodation shall count as eligible rent for the purposes of these Regulations.

(5) Where more than one person is liable to make payments in respect of a dwelling, the payments specified in paragraph (1) shall be apportioned for the purpose of calculating the eligible rent for each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each such person.

(6) The amount of the deduction in respect of rates referred to in paragraph (3) shall be—

(a) if the dwelling occupied by the claimant is a single rateable unit, the amount of the rates payable in respect of the rateable unit as a whole; or

(b) if the dwelling comprises part only of a rateable unit, the amount treated as a payment by way of rates by virtue of regulation 12(2).

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

(8) In this regulation and Schedule 1—

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

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

Maximum rent

14.—(1) Where the Executive has made a decision in accordance with Schedule 2, the maximum rent shall be decided in accordance with paragraphs (2) to (17).

(2) In a case where a claim-related rent has been decided, but a local reference rent or a single room rent is not required, the maximum rent shall be that claim-related rent.

(3) In a case where a local reference rent has been decided, the maximum rent shall not exceed twice that local reference rent.

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

(a) except where sub-paragraph (b) applies, where the Executive has decided a single room rent, the maximum rent shall not exceed that single room rent;

(b) where—

(i) the Executive has decided a single room rent and a claim-related rent;

(ii) the claim-related rent includes payment in respect of meals, and

(iii) the single room rent is greater than the claim-related rent less an amount in respect of meals decided in accordance with paragraph 2 of Schedule 1,

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

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

(a) to whom paragraph 4 of Schedule 3 to the Consequential Provisions Regulations (saving provision) applies;

(b) to whom paragraph 14 of Schedule 4 applies; or

(c) who has a non-dependant residing with him.

(6) Subject to the limits specified in paragraphs (3) and (4), in a case where both a local reference rent and a claim-related rent has been decided, and—

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

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

(7) Subject to the limits specified in paragraphs (3) and (4), in a case where a local reference rent has been decided, but a claim-related rent has not been decided and the reckonable rent is more than the local reference rent, the maximum rent shall be the local reference rent.

(8) In a case where—

(a) the Executive has decided a maximum rent in respect of a dwelling; and

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

then—

(i) the maximum rent shall not be reduced, where the sum is not less than the maximum rent, during a period ending on the effective date of a decision made by the Executive under regulation 15, and

(ii) the maximum rent shall be reduced to an amount equal to that sum, where that sum is less than the maximum rent during a period ending on the effective date of a decision made by the Executive under regulation 15.

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

(a) the Executive has made a decision under regulation 16(1); and

(b) subsequent to that decision the reckonable rent for that dwelling is changed,

then in deciding a maximum rent in relation to a claim for benefit of a claimant who has a liability to make payments in respect of that dwelling, the Executive shall treat the claim-related rent or, as the case may be, reckonable rent to be that decided in or, as the case may be, applicable to, that decision referred to in sub-paragraph (a).

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

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

(a) the maximum rent which applied before the death occurred; or

(b) in a case where there was no maximum rent, the reckonable rent due before the death occurred,

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

(12) For the purposes of paragraph (11), a claimant shall be treated as occupying the dwelling if paragraph (13) of regulation 7 is satisfied and for that purpose sub-paragraph (b) of that paragraph of that regulation shall be treated as if it were omitted.

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

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

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

(16) This paragraph applies to the following persons—

(a) the claimant;

(b) any member of his family;

(c) if the claimant is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household;

(d) subject to paragraph (17), any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him.

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

(18) In this regulation—

"claim-related rent" means the rent decided by the Executive under paragraph 6 of Schedule 2;

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

"local reference rent" means the rent decided in accordance with paragraph 4 of Schedule 2;

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

"single room rent" means the rent decided by the Executive under paragraph 5 of Schedule 2.

Decisions

15.—(1) Subject to paragraph (3), in respect of a claim for rent allowance the Executive shall—

(a) make the decision in accordance with Part I of Schedule 2; and

(b) comply with Part II of Schedule 2 when making the decision.

(2) The Executive, on the first working day of each month, shall—

(a) make a decision in accordance with Part III of Schedule 2; and

(b) comply with paragraph 8(2) of Schedule 2 when making the decision.

(3) No decision shall be made—

(a) under paragraph 3, 4 or 5 of Schedule 2 if the tenancy is of residential accommodation, within the meaning of regulation 9(4), or in a hostel;

(b) for a tenancy under Schedule 3; or

(c) under paragraph 5 of Schedule 2 unless the Executive is satisfied that the claimant is, or may be, a young individual.

(4) This regulation shall apply as specified in Part V of Schedule 2 in relation to—

(a) mooring charges payable for a houseboat;

(b) payments in respect of the site on which a caravan or a mobile home stands; or

(c) payments under a rental purchase agreement.

Pre-tenancy decisions

16.—(1) Except in the case where any liability to make payments in respect of a dwelling would be to the Executive, a decision shall be made by the Executive of the amount of rent which may be used in the calculation of housing benefit, where a request is received from a person ("the prospective occupier") on a properly completed form approved for the purpose by the Executive, signifying that he is contemplating occupying a dwelling as his home and that if he does so, he is likely to claim housing benefit, but only where that form—

(a) is signed by the prospective occupier;

(b) is countersigned by the person to whom the prospective occupier would incur liability to make such payments; and

(c) indicates that the person countersigning agrees to the application being made for that decision.

(2) A decision by the Executive shall not be required under paragraph (1) where a request relates to—

(a) a dwelling in a hostel if, during the period of 12 months which ends on the day on which that request is received by the Executive—

(i) the Executive has already made a decision in accordance with Schedule 2 in respect of a dwelling in that hostel which is a similar dwelling to the dwelling to which the request relates, and

(ii) there has been no change relating to a rent allowance that has affected the dwelling in respect of which that decision was made; or

(b) an "excluded tenancy" within the meaning of Schedule 3.

(3) Where the Executive receives a request pursuant to paragraph (1) it shall make a decision within 7 days of receipt of that request except it is a case where, by reason of paragraph (2), a decision in accordance with Schedule 2 is not required, where the Executive shall—

(a) return it to the prospective occupier, indicating why no such application is required; and

(b) where it is not required by reason of either paragraph (2)(a) of this regulation or paragraph 2 of Schedule 3, also send him a copy of the previous decision within 4 days of the receipt of that request.

(4) For the purpose of calculating the period of days mentioned in paragraph (3)(b), no regard shall be had to a day in which the offices of the Executive are closed for the purposes of receiving or deciding claims.

(5) In this regulation—

"change relating to a rent allowance" means a change or increase to which paragraph 2(3)(a), (b), (c) or (d) of Schedule 3 applies;

"prospective occupier" shall include a person currently in receipt of housing benefit in respect of a dwelling which he occupies as his home and who is contemplating entering into a new agreement to occupy that dwelling, but not in a case where his current agreement commenced less than 11 months before such a request;

"registered housing association" means a housing association which is registered in a register maintained under Article 14 of the Housing (Northern Ireland) Order 1992 (**61**).

PART IV

Membership of a family

Persons of prescribed description

17.—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 133(1) of the Act as it applies to housing benefit (definition of family(**62**)) is a person who falls within the definition of qualifying young person in section 138 of the Act(**63**) (child and qualifying young person), and in these Regulations such a person is referred to as a "young person".

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

(a) on income support or an income-based jobseeker's allowance; or

(b) a person to whom section 6 of the Children (Leaving Care) Act (Northern Ireland) 2002(**64**) (exclusion from benefits) applies.

(3) A person of a prescribed description for the purposes of section 133(1) of the Act as it applies to housing benefit (definition of family) includes a child or young person in respect of whom section 141A of that Act(**65**) applies for the purposes of entitlement to child benefit but only for the period prescribed under section 141A(1) of that Act.

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

18.—(1) Subject to the following provisions of this regulation, a person shall be treated as responsible for a child or young person who is normally living with him and this includes a child or young person to whom regulation 17(3) applies.

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

(a) the person who is receiving child benefit in respect of him; or

(b) if there is no such person—

(i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or

(**61**) S.I. 1992/1725 (N.I. 15)
(**62**) The definition of "family" was amended by paragraph 99(2) of Schedule 24 to the Civil Partnership Act 2004 (c. 33)
(**63**) Section 138 was substituted by section 2(2) of the Child Benefit Act 2005 (c. 6); *see also* regulation 2 of S.I. 2006/223
(**64**) 2002 c. 11 (N.I.)
(**65**) Section 141A was inserted by section 55 of the Tax Credits Act 2002 (c. 21) and amended by paragraph 101 of Schedule 24 to the Civil Partnership Act 2004 and paragraph 38 of Schedule 1 to the Child Benefit Act 2005

(ii) in any other case the person who has the primary responsibility for him.

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

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

19.—(1) Subject to paragraphs (2) to (4), the claimant and any partner and, where the claimant or his partner is treated as responsible by virtue of regulation 18 for a child or young person, that child or young person and any child of that child or young person, shall be treated as members of the same household notwithstanding that any of them is temporarily living away from the other members of his family.

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

(a) that person does not intend to resume living with the other members of his family; or

(b) his absence from the other members of his family is likely to exceed 52 weeks, unless there are exceptional circumstances (for example where the person is in hospital or otherwise has no control over the length of his absence) and the absence is unlikely to be substantially more than 52 weeks.

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

(a) placed with the claimant or his partner by an authority, as defined in Article 2 of the Children Order, under Article 27(2)(a) of that Order (provision of accommodation and maintenance by an authority for children whom it is looking after) or by a voluntary organisation under Article 75(1)(a) of that Order (provision of accommodation by voluntary organisation);

(b) placed with the claimant or his partner prior to adoption; or

(c) placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989(**66**).

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

(a) is being looked after by an authority, as defined in Article 2 of the Children Order, under a relevant enactment;

(b) has been placed with a person other than the claimant prior to adoption; or

(c) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989.

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

(a) that child or young person lives with the claimant for part or all of that benefit week; and

(b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.

(6) In this regulation "relevant enactment" means the Army Act 1955(**67**), the Air Force Act 1955(**68**), the Naval Discipline Act 1957(**69**),the Children and Young Persons Act (Northern

(**66**) S.R. 1989 No. 253
(**67**) 1955 c. 18
(**68**) 1955 c. 19

Ireland) 1968(**70**), the Health and Personal Social Services Order, the Family Law Reform (Northern Ireland) Order 1977(**71**), the Matrimonial Causes (Northern Ireland) Order 1978(**72**), the Domestic Proceedings (Northern Ireland) Order 1980(**73**), the Adoption (Northern Ireland) Order 1987(**74**) and the Children Order.

PART V

Applicable amounts

Applicable amounts

20. Subject to regulations 21, 78 and 79 and Schedule A1(**75**) (treatment of claims for housing benefit by refugees), a claimant's weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

(a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1(1), (2) or (3), as the case may be, of Schedule 4;

(b) an amount determined in accordance with paragraph 2 of Schedule 4 in respect of any child or young person who is a member of his family;

(c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part II of Schedule 4;

(d) the amount of any premiums which may be applicable to him, determined in accordance with Parts III and IV of Schedule 4.

Polygamous marriages

21. Subject to regulations 78 and 79 and Schedule A1, where a claimant is a member of a polygamous marriage, his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

(a) the highest amount applicable to him and one of his partners determined in accordance with paragraph 1(3) of Schedule 4 as if he and that partner were a couple;

(b) an amount equal to the difference between the amounts specified in sub-paragraphs (3)(b) and (1)(b) of paragraph 1 of Schedule 4 in respect of each of his other partners;

(c) an amount determined in accordance with paragraph 2 of Schedule 4 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;

(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 4;

(e) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 4.

(69) 1957 c. 53
(70) 1968 c. 34 (N.I.)
(71) S.I. 1977/1250 (N.I. 17)
(72) S.I. 1978/1045 (N.I. 15)
(73) S.I. 1980/563 (N.I. 5)
(74) S.I. 1987/2203 (N.I. 22)
(75) *See*, for Schedule A1, paragraph 2(2) of Schedule 4 to S.R. 2006 No. 407

PART VI

Income and capital

SECTION 1

General

Calculation of income and capital of members of claimant's family and of a polygamous marriage

22.—(1) The income and capital of a claimant's partner which by virtue of section 132(1) of the Act is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the "claimant" shall be construed for the purposes of this Part as if it were a reference to his partner.

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

(a) the claimant shall be treated as possessing capital and income belonging to each such member; and

(b) the income and capital of that member shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant.

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

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

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

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

SECTION 2

Income

Calculation of income on a weekly basis

24.—(1) Subject to regulations 31, 78 and 79 for the purposes of section 129(1)(c) of the Act (conditions of entitlement to housing benefit) the income of a claimant shall be calculated on a weekly basis—

(a) by estimating the amount which is likely to be his average weekly income in accordance with this Section and Sections 3 to 5 of this Part and Sections 1 and 3 of Part VII;

(b) by adding to that amount the weekly income calculated under regulation 49; and

(c) by then deducting any relevant child care charges to which regulation 25 applies from any earnings which form part of the average weekly income or, in a case where the conditions in paragraph (2) are met, from those earnings plus whichever credit specified in sub-paragraph (b) of that paragraph is appropriate, up to a maximum deduction in respect of the claimant's family of whichever of the sums specified in paragraph (3) applies in his case.

(2) The conditions of this paragraph are that—

(a) the claimant's earnings which form part of his average weekly income are less than the lower of either his relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in his case; and

(b) that claimant or, if he is a member of a couple either the claimant or his partner, is in receipt of either working tax credit or child tax credit.

(3) The maximum deduction to which paragraph (1)(c) refers shall be—

(a) where the claimant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week;

(b) where the claimant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

(4) For the purposes of paragraph (1) "income" includes capital treated as income under regulation 38 and income which a claimant is treated as possessing under regulation 39.

Treatment of child care charges

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

(a) is a lone parent and is engaged in remunerative work;

(b) is a member of a couple both of whom are engaged in remunerative work; or

(c) is a member of a couple where one member is engaged in remunerative work and the other—

(i) is incapacitated;

(ii) is an in-patient in hospital, or

(iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

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

(a) is paid statutory sick pay;

(b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Act(**76**);

(**76**) 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)) and amended by Article 61 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and paragraph 68 of Schedule 24 to the Civil Partnership Act 2004; section 30B was inserted by Article 4(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and amended by paragraphs 14(b) and 18(3) of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)), paragraph 21 of Schedule 8 to the Welfare Reform and Pensions (Northern Ireland) Order 1999, Schedule 6 to the Tax Credits Act 2002 and paragraph 69 of Schedule 24 to the Civil Partnership Act 2004; section 30C was inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and amended by paragraph 37 of Schedule 3 to the Tax Credits Act 2002; section 30D was inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994; section 30DD was inserted by Article 60 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 and section 30E was inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(c) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support Regulations(**77**); or

(d) is credited with earnings on the grounds of incapacity for work under regulation 8B of the Social Security (Credits) Regulations (Northern Ireland) 1975(**78**).

(3) This paragraph applies to a person who was engaged in remunerative work immediately before—

(a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit or income support on the grounds of incapacity for work; or

(b) the first day of the period in respect of which earnings are credited,

as the case may be.

(4) In a case to which paragraph (2)(c) or (d) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.

(5) Relevant child care charges are those charges for care to which paragraphs (6) and (7) apply, and shall be calculated on a weekly basis in accordance with paragraph (10).

(6) The charges are paid by the claimant for care which is provided—

(a) in the case of any child of the claimant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday; or

(b) in the case of any child of the claimant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.

(7) The charges are paid for care which is provided by one or more of the care providers listed in paragraph (8) and are not paid—

(a) in respect of the child's compulsory education;

(b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 18; or

(c) in respect of child care provided by a relative of a child wholly or mainly in the child's home.

(8) The care to which paragraph (7) refers may be provided—

(a) out of school hours, by a school on school premises or by an education and library board or an HSS trust—

(i) for children who are not disabled in respect of the period beginning on 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 their twelfth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;

(b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999(**79**); or

(**77**) Regulation 4ZA was inserted by regulation 4 of S.R. 1996 No. 199 and amended by regulation 5(2) of S.R. 1997 No. 412, regulation 5(3) of S.R. 2000 No. 71 and the Schedule to S.R. 2000 No. 241 and Schedule 1B was inserted by Schedule 1 to S.R. 1996 No. 199 and paragraph 14 was amended by regulation 2 of S.R. 2002 No. 332

(**78**) S.R. 1975 No. 113; regulation 8B was inserted by regulation 2(6) of S.R. 1996 No. 430 and amended by regulation 3 of S.R. 2000 No. 404 and regulation 2(2) of S.R. 2003 No. 151

(**79**) S.I. 1999/3110

(c) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act.

(9) In—

(a) paragraphs (6) and (8)(a), "the first Monday in September" means the Monday which first occurs in the month of September in any year; and

(b) paragraph (8)(a), "education and library board" means an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986(**80**).

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

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

(a) the claimant's applicable amount includes—

(i) a disability premium, or

(ii) a higher pensioner premium by virtue of the satisfaction of paragraph 11(2)(b) of Schedule 4,

on account of the other member's incapacity;

(b) the claimant'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 made under section 167E of the Act(**81**) (incapacity for work: disqualification, etc.);

(c) the claimant (within the meaning of regulation 2(1)) is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part XIIA of the Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any 2 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 pensions or allowances—

(i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under Schedule 4 to the Act(**82**);

(ii) attendance allowance under section 64 of the Act(**83**);

(iii) severe disablement allowance under section 68 of the Act(**84**);

(iv) disability living allowance;

(v) increase of disablement pension under section 104 of the Act;

(vi) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v);

(**80**) S.I. 1986/594 (N.I. 3)

(**81**) Part XIIA, which includes section 167E, was inserted by Articles 7 and 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994; section 167E was amended by paragraph 57 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

(**82**) In Schedule 4 paragraph 2 was substituted by Article 4(2) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(**83**) Section 64 was amended by Article 63(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(**84**) Section 68 was amended by Article 11 of, and paragraph 18 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and regulation 2(2) of S.R. 1994 No. 370 and repealed by Schedule 10 to the Welfare Reform and Pensions (Northern Ireland) Order 1999, subject to savings in Article 4 of S.R. 2000 No. 332 (C. 14)

(e) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (d) refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient, which in this regulation shall mean a person (other than a person who is serving a sentence of imprisonment or detention in a young offenders centre or a juvenile justice centre) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005(**85**);

(f) sub-paragraph (d) or (e) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Great Britain; or

(g) he has an invalid carriage or other vehicle provided to him by the Department of Health, Social Services and Public Safety(**86**) under Article 30(1) of the Health and Personal Social Services Order or provided by the Secretary of State under section 5(2)(a) of, and Schedule 2 to, the National Health Service Act 1977(**87**) or under section 46 of the National Health Service (Scotland) Act 1978(**88**).

(12) For the purposes of paragraph (11), once paragraph (11)(c) applies to the claimant, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.

(13) For the purposes of paragraphs (6) and (8)(a), a person is disabled if he is a person—

(a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;

(b) who has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a Health and Social Services Board; or

(c) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following that person's fifteenth birthday and ending on the day preceding the first Monday in September following that person's sixteenth birthday.

(14) For the purposes of—

(a) paragraph (1) a person on maternity leave, paternity leave or adoption leave shall be treated as if he is engaged in remunerative work for the period specified in sub-paragraph (b) ("the relevant period") provided that—

(i) in the week before the period of maternity leave, paternity leave or adoption leave began he was in remunerative work;

(ii) the claimant is incurring relevant child care charges within the meaning of paragraph (5), and

(iii) he is entitled to statutory maternity pay under section 160 of the Act, statutory paternity pay by virtue of section 167ZA or 167ZB of the Act (**89**), statutory adoption pay by virtue of section 167ZL of the Act(**90**), maternity allowance under section 35 of the Act or qualifying support;

(**85**) S.R. 2005 No. 580
(**86**) *See* Article 3(6) of the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1))
(**87**) 1977 c. 49
(**88**) 1978 c. 29
(**89**) Sections 167ZA and 167ZB were inserted by Article 5 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**90**) Section 167ZL was inserted by Article 6 of the Employment (Northern Ireland) Order 2002

(b) sub-paragraph (a) the relevant period shall begin on and include the day on which the person's maternity leave, paternity leave or adoption leave commences and shall end on—

(i) the date that leave ends;

(ii) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, statutory paternity pay or statutory adoption pay ends, the date that entitlement ends, or

(iii) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, statutory paternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of working tax credit ends,

whichever shall occur first.

(15) In paragraph (14)—

"qualifying support" means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support Regulations(**91**) (paternity leave);

"child care element" of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act (child care element).

Average weekly earnings of employed earners

26.—(1) Where a claimant's income consists of earnings from employment as an employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment—

(a) over a period immediately preceding the benefit week in which the claim is made or treated as made and being a period of—

(i) 5 weeks, if he is paid weekly, or

(ii) 2 months, if he is paid monthly; or

(b) whether or not sub-paragraph (a)(i) or (ii) applies, where a claimant's earnings fluctuate, over such other period preceding the benefit week in which the claim is made or treated as made as may, in any particular case, enable his average weekly earnings to be estimated more accurately.

(2) Where the claimant has been in his employment for less than the period specified in paragraph (1)(a)(i) or (ii)—

(a) if he has received any earnings for the period that he has been in that employment and those earnings are likely to represent his average weekly earnings from that employment his average weekly earnings shall be estimated by reference to those earnings;

(b) in any other case, the relevant authority shall require the claimant's employer to furnish an estimate of the claimant's likely weekly earnings over such period as the appropriate authority may require and the claimant's average weekly earnings shall be estimated by reference to that estimate.

(3) Where the amount of a claimant's earnings changes during an award the relevant authority shall estimate his average weekly earnings by reference to his likely earnings from the employment over such period as is appropriate in order that his average weekly earnings may be estimated accurately but the length of the period shall not in any case exceed 52 weeks.

(**91**) Schedule 1B was inserted by Schedule 1 to S.R. 1996 No. 199; paragraph 14B was inserted by regulation 2(5) of S.R. 2002 No. 363 and amended by paragraph 19 of Schedule 1 to S.R. 2003 No. 195 and regulation 2(3) of S.R. 2003 No. 338

(4) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Section 3 of this Part.

Average weekly earnings of self-employed earners

27.—(1) Where a claimant's income consists of earnings from employment as a self-employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment over such period as is appropriate in order that his average weekly earnings may be estimated accurately but the length of the period shall not in any case exceed a year.

(2) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Section 4 of this Part.

Average weekly income other than earnings

28.—(1) A claimant's income which does not consist of earnings shall, except where paragraph (2) applies, be estimated over such period as is appropriate in order that his average weekly income may be estimated accurately but the length of the period shall not in any case exceed 52 weeks; and nothing in this paragraph shall authorise an authority to disregard any such income other than that specified in Schedule 6.

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

(3) For the purposes of this regulation income other than earnings shall be calculated in accordance with Section 5 of this Part.

Calculation of average weekly income from tax credits

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

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

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

(a) a daily instalment, the period is one day, being the day in respect of which the instalment is paid;

(b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;

(c) a 2 weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;

(d) a 4 weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this regulation "tax credit" means child tax credit or working tax credit.

Calculation of weekly income

30.—(1) For the purposes of regulations 26 and 29, 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 27 the weekly amount of earnings of a claimant shall be determined by dividing his earnings over the assessment period by the number equal to the number of days in that period and multiplying the quotient by 7.

Disregard of changes in tax, contributions etc.

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

(a) in the basic or other rates of income tax;

(b) in the amount of any personal tax relief;

(c) in the rates of social security contributions payable under the Act or in the lower earnings limit or upper earnings limit for Class 1 contributions under the Act, the lower or upper limits applicable to Class 4 contributions under the Act or the amount specified in section 11(4) of the Act (small earnings exception in relation to Class 2 contributions);

(d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the Act;

(e) in the maximum rate of child tax credit or working tax credit,

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

SECTION 3

Employed earners

Earnings of employed earners

32.—(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 claimant 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 in so far 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 claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—

(i) travelling expenses incurred by the claimant between his home and place of employment;

(ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;

(g) any award of compensation made under Article 146(4) and 151(3)(a) of the Employment Rights Order(**92**) (remedies for unfair dismissal);

(h) any such sum as is referred to in section 112 of the Act(**93**) (certain sums to be earnings for social security purposes);

(i) any statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, 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 claimant who for the time being is on maternity leave, paternity leave or adoption 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 Part V of Schedule 3 to the Social Security (Contributions) Regulations 2001(**94**).

(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)(l).

Calculation of net earnings of employed earners

33.—(1) For the purposes of regulation 26, the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

(2) There shall be disregarded from a claimant's net earnings, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 5.

(3) For the purposes of paragraph (1) net earnings shall, except where paragraph (6) applies, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less—

(a) any amount deducted from those earnings by way of—

(i) income tax;

(ii) primary Class 1 contributions under the Act;

(b) one half of any sum paid by the claimant by way of a contribution towards an occupational pension scheme;

(**92**) Article 146(4) was amended by paragraph 10 of Schedule 1 to the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8)), Schedule 9 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)) and paragraph 2(6) of Schedule 5 to the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15)) and Article 151(3) was amended by paragraph 11 of Schedule 1 to the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998, Article 32(2) of, and Schedule 9 to, the Employment Relations (Northern Ireland) Order 1999 and paragraph 2(6) of Schedule 5 to the Employment (Northern Ireland) Order 2003

(**93**) Section 112 was amended by Schedule 1 to the Employment Rights (Northern Ireland) Order 1996 and paragraph 21 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

(**94**) S.I. 2001/1004

(c) one half of the amount calculated in accordance with paragraph (5) in respect of any qualifying contribution payable by the claimant; and

(d) where those earnings include a payment which is payable under any statute of the Parliament of the United Kingdom extending solely to Great Britain and which corresponds to statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which are payable under any statute of the Parliament of the United Kingdom extending solely to Great Britain and which correspond to primary Class 1 contributions under the Act.

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

(5) 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.

(6) Where the earnings of a claimant are estimated under regulation 26(2)(b), his net earnings shall be calculated by taking into account those earnings over the assessment period, less—

(a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under section 257(1) of the Taxes Act(**95**) (personal allowance) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro-rata basis;

(b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the Act in respect of those earnings if such contributions were payable; and

(c) one half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

(7) Where the claimant 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, in the opinion of the appropriate authority, would have been deducted had the claimant been employed in Northern Ireland.

SECTION 4

Self-employed earners

Earnings of self-employed earners

34.—(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 arrangement made by the Department for Employment and Learning under sections

(**95**) Section 257 was substituted by section 33 of the Finance Act 1988 (c. 39)

2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(**96**) or section 1(1) of the 1950 Act(**97**) or any equivalent allowance payable under Republic of Ireland legislation to the claimant for the purpose of assisting him in carrying on his business unless at the date of claim the allowance has been terminated.

(2) "Earnings" shall not include any payment to which paragraph 27 or 28 of Schedule 6 refers nor shall it include any sports award.

Calculation of net profit of self-employed earners

35.—(1) For the purposes of regulation 27 the earnings of a claimant to be taken into account shall be—

(a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;

(b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations (Northern Ireland) 1975(**98**), his share of the net profit derived from that employment, less—

(i) an amount in respect of income tax and of social security contributions payable under the Act calculated in accordance with regulation 36, and

(ii) one half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(2) There shall be disregarded from a claimant's net profit, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 5.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (9) applies, be calculated 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 Act,

calculated in accordance with regulation 36; and

(c) one half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(4) For the purposes of paragraph (1)(b) the net profit of the employment shall be calculated by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (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) the depreciation of any capital asset;

(**96**) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

(**97**) Section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(**98**) S R. 1975 No. 108

(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;

(b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair; and

(c) the purchase of land under the Northern Ireland Land Act 1925(**99**).

(7) The relevant authority shall refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.

(8) For the avoidance of doubt—

(a) a deduction shall not be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;

(b) a deduction shall be made thereunder in respect of—

(i) the excess of any value added tax paid over value added tax received in the assessment period;

(ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;

(iii) any payment of interest on a loan taken out for the purposes of the employment.

(9) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be one third of the earnings of that employment, less—

(a) an amount in respect of—

(i) income tax, and

(ii) social security contributions payable under the Act,

calculated in accordance with regulation 36; and

(b) one half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

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

(11) 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;

(**99**) 1925 c. 34

(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.

(12) Where the claimant is a self-employed earner in the Republic of Ireland the amounts to be deducted for income tax and social security contributions under this regulation shall be such amounts as, in the opinion of the appropriate authority, would have been deducted had the claimant been employed in Northern Ireland.

(13) In this regulation, "qualifying premium" means any premium which is payable periodically in respect of a retirement annuity contract or a personal pension scheme and is so payable on or after the date of claim.

Deduction of tax and contributions of self-employed earners

36.—(1) The amount to be deducted in respect of income tax under regulation 35(1)(b)(i), (3)(b)(i) or (9)(a)(i) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under section 257(1) of the Taxes Act (personal allowance) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal 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 35(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, 11(3) of the Act at the rate applicable to the assessment period except where the claimant's chargeable income is less than the amount specified in section 11(4) of the Act (small earnings exception) for the tax year applicable to the assessment period; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and

(b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable to the assessment period on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year applicable to the assessment period; but if the assessment period is less than a year, those limits shall be reduced pro rata.

(3) In this regulation "chargeable income" means—

(a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 35;

(b) in the case of employment as a child minder, one third of the earnings of that employment.

SECTION 5

Other income

Calculation of income other than earnings

37.—(1) For the purposes of regulation 28, the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs (2) to (5), be his gross income and any capital treated as income under regulation 38.

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

(3) Where the payment of any benefit under the benefit Acts 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) Where an award of any working tax credit or child tax credit under the Tax Credits Act is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit which arose in a previous tax year the amount to be taken into account under paragraph (1) shall be the amount of working tax credit or child tax credit awarded less the amount of that deduction.

(5) Paragraph (6) applies where—

(a) a relevant payment has been made to a person in an academic year; and

(b) that person abandons, or is dismissed from, his course of study before the payment to him of the final instalment of the relevant payment.

(6) The amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a person to whom paragraph (5) applies, shall be calculated by applying the formula—

$$\frac{A-(B\times C)}{D}$$

where—

A = the total amount of the relevant payment which that person would have received had he remained a student until the last day of the academic term in which he abandoned, or was dismissed from, his course, less any deduction under regulation 61(5);

B = the number of benefit weeks from the benefit week immediately following that which includes the first day of that academic year to the benefit week which includes the day on which the person abandoned, or was dismissed from, his course;

C = the weekly amount of the relevant payment, before the application of the £10 disregard, which would have been taken into account as income under regulation 61(2) had the person not abandoned, or been dismissed from, his course and, in the case of a person who was not entitled to housing benefit immediately before he abandoned, or was dismissed from, his course, had that person, at that time, been entitled to housing benefit;

D = the number of benefit weeks in the assessment period.

(7) In paragraphs (5) and (6)—

"academic year" and "student loan" shall have the same meanings as for the purposes of Part VII;

"assessment period" means the period beginning with the benefit week immediately following that which includes the day on which the person abandoned, or was dismissed from, his course and ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that person and for the purposes of this definition, "quarter" shall have the same meaning as for the purposes of the Education (Student Support) Regulations (Northern Ireland) 2005(**100**);

"relevant payment" means either a student loan or an amount intended for the maintenance of dependants referred to in regulation 56(7) or both.

(8) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1)—

(a) any payment to which regulation 32(2) applies; or

(b) in the case of a claimant who is receiving support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.

(**100**) S.R. 2005 No. 340

Capital treated as income

38.—(1) Any capital payable by instalments which are outstanding at the date on which the claim is made or treated as made, or, at the date of any subsequent revision or supersession, shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Section 6 of this Part exceeds £16,000, be treated as income.

(2) Any payment received under an annuity shall be treated as income.

(3) Any earnings to the extent that they are not a payment of income shall be treated as income.

(4) Where an agreement or court order provides that payments shall be made to the claimant in consequence of any personal injury to the claimant and that such payments are to be made, wholly or partly, by way of periodic payments, any such periodic payments received by the claimant (but not a payment which is treated as capital by virtue of this Part), shall be treated as income.

Notional income

39.—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit.

(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, occupational pension scheme, retirement annuity contract or a payment made by the Board of the Pension Protection Fund where the claimant is aged under 60;

(d) any sum to which paragraph 45(2)(a) of Schedule 7 refers;

(e) child tax credit; or

(f) working tax credit,

any income which would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by the claimant but only from the date on which it could be expected to be acquired were an application 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 paragraph (3)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined

by the relevant authority which shall take account of information provided by the pension fund holder in accordance with regulation 82(6).

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

(6) Any payment of income, other than a payment of income specified in paragraph (7), made—

(a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, be treated as possessed by that single claimant or, as the case may be, by that member;

(b) to a third party in respect of a single claimant 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 claimant or by that member to the extent that it is used for the food, household fuel or, subject to paragraph (14), rent or rates or both or ordinary clothing or footwear, of that single claimant or, as the case may be, of any member of that family;

(c) to a single claimant 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 claimant 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.

(7) Paragraph (6) shall not apply in respect of a payment of income made—

(a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds;

(b) pursuant to section 19(1)(a) of the Coal Industry Act 1994(**101**) (concessionary coal);

(c) pursuant to section 1 of the 1950 Act in respect of a person's participation—

(i) in an employment programme specified in regulation 75(1)(a) of the Jobseeker's Allowance Regulations(**102**);

(ii) in the Preparation for Employment Programme for 50 plus;

(iii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations, or

(iv) in a qualifying course within the meaning specified in regulation 17A(7)(**103**) of those Regulations;

(d) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund 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(**104**);

(**101**) 1994 c. 21

(**102**) Regulation 75 was substituted by regulation 8 of S.R. 1997 No. 541 and paragraph (1) was amended by regulation 8 of S.R. 1998 No. 198, regulation 2(4) of S.R. 2000 No. 197, paragraph 32(a) and (b) of Schedule 2 to S.R. 2000 No. 350, regulation 5(a) of S.R. 2001 No. 151 and regulation 2(4) of S.R. 2002 No. 275

(**103**) Regulation 17A was inserted by regulation 4 of S.R. 1998 No. 198

(**104**) 1980 c. 46

(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 other income apart from that payment.

(8) Where a claimant is in receipt of any benefit (other than housing benefit) under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the relevant authority shall treat the claimant as possessing such benefit at the altered rate—

(a) in a case in which the claimant's weekly amount of eligible rent or, as the case may be, rates falls to be calculated in accordance with regulation 78(2)(b) or (c) or, as the case may be, (3)(b) or (c), from 1st April in that year;

(b) in any other case, from the first Monday in April in that year,

to the date on which the altered rate is to take effect.

(9) Subject to paragraph (10), where—

(a) a claimant 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 authority shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the authority that the means of that person are insufficient for him to pay or to pay more for the service.

(10) Paragraph (9) shall not apply—

(a) to a claimant who is engaged by a charitable or voluntary organisation or who is a volunteer if the relevant authority is satisfied in any of those cases that it is reasonable for him to provide those services free of charge; or

(b) in a case where the service is performed in connection with—

(i) the claimant's participation 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 specified in regulation 75(1)(a)(v) of those Regulations or in the Preparation for Employment Programme for 50 plus, or

(ii) the claimant's or the claimant's partner's participation in an employment or training programme as defined in regulation 19(3) of those 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.

(11) Where a claimant is treated as possessing any income under any of paragraphs (1) to (8), the foregoing provisions of this Part shall apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(12) Where a claimant is treated as possessing any earnings under paragraph (9) the foregoing provisions of this Part shall apply for the purposes of calculating 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 regulation 33(3) shall not apply and his net earnings shall be calculated 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 calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under section 257(1) of the Taxes Act (personal allowance) as is appropriate to

his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro-rata basis;

(b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the Act in respect of those earnings if such contributions were payable; and

(c) one half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

(13) Where the claimant 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, in the opinion of the appropriate authority, would have been deducted had the claimant been employed in Northern Ireland.

(14) In paragraph (6) "rent or rates" means eligible rent or rates less any deductions in respect of non-dependants which fall to be made under regulation 72.

SECTION 6

Capital

Capital limit

40. For the purposes of section 130(1) of the Act as it applies to housing benefit (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.

Calculation of capital

41.—(1) For the purposes of Part VII of the Act (income-related benefits) as it applies to housing benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 43.

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1), any capital, where applicable, specified in Schedule 7.

Disregard of capital of child and young person

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

Income treated as capital

43.—(1) Any bounty derived from employment to which paragraph 8 of Schedule 5 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 32(1)(d) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 4, 8, 14, 26 to 29 or 45 of Schedule 7, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer shall be treated as capital.

(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 Eileen Trust or the Independent Living Funds, shall be treated as capital.

(7) There shall be treated as capital the gross receipts of any commercial activity carried on by a person in respect of which assistance is received under the self-employment route, but only in so far as those receipts were payable into a special account (as defined for the purposes of Chapter IVA of Part VIII of the Jobseeker's Allowance Regulations(**105**)) during the period in which that person was receiving such assistance.

(8) Any arrears of working tax credit or child tax credit shall be treated as capital.

Calculation of capital in the United Kingdom

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

(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 a National Savings Certificate—

(i) if purchased from an issue the sale of which ceased before 1st July last preceding the date on which the claim is made or treated as made, or the date of any subsequent revision or supersession, at the price which it would have realised on that 1st July, had it been purchased on the last day of that issue;

(ii) in any other case, at its purchase price.

Calculation of capital outside the United Kingdom

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

(a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;

(b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

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

Notional capital

46.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit except to the extent that that capital is reduced in accordance with regulation 47.

(**105**)Chapter IVA was inserted by regulation 4(4) of S.R. 1998 No. 182

(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 7;

(d) a personal pension scheme, occupational pension scheme, retirement annuity contract or a payment made by the Board of the Pension Protection Fund;

(e) any sum to which paragraph 45(2)(a) of Schedule 7 refers;

(f) child tax credit; or

(g) working tax credit,

any capital which would become available to the claimant 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 be acquired were an application made.

(3) Any payment of capital, other than a payment of capital specified in paragraph (4), made—

(a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, be treated as possessed by that single claimant or, as the case may be, by that member;

(b) to a third party in respect of a single claimant 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 claimant or by that member to the extent that it is used for the food, household fuel or, subject to paragraph (8), rent or rates or both or ordinary clothing or footwear, of that single claimant or, as the case may be, of any member of that family;

(c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant 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) Paragraph (3) shall not apply in respect of a payment of capital made—

(a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust, the Independent Living Funds, the Skipton Fund or the London Bombings Relief Charitable Fund;

(b) pursuant to section 1 of the 1950 Act in respect of a person's participation—

(i) in an employment programme specified in regulation 75(1)(a) of the Jobseeker's Allowance Regulations;

(ii) in the Preparation for Employment Programme for 50 plus;

(iii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;

(iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations;

(c) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund 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 other income apart from that payment.

(5) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he 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 41 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 that company and the foregoing provisions of this Section shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(6) For so long as the claimant 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 claimant is treated as possessing capital under any of paragraphs (1) to (5) the foregoing provisions of this Section shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

(8) In paragraph (3) "rent or rates" means eligible rent or rates less any deductions in respect of non-dependants which fall to be made under regulation 72.

Diminishing notional capital rule

47.—(1) Where a claimant is treated as possessing capital under regulation 46(1), the amount which he is treated as possessing—

(a) in the case of a week that is subsequent to—

(i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied, or

(ii) a week which follows that relevant week and which satisfies those conditions,

shall be reduced by an amount determined under paragraph (3);

(b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—

(i) that week is a week subsequent to the relevant week, and

(ii) that relevant week is a week in which the condition in paragraph (4) is satisfied,

shall be reduced by the amount determined under paragraph (4).

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

(a) he is in receipt of housing benefit; and

(b) but for regulation 46(1), he would have received an additional amount of housing benefit in that week.

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

(a) the additional amount to which paragraph (2)(b) refers;

(b) where the claimant has also claimed income support, the amount of income support to which he would have been entitled in respect of the benefit week to which paragraph (2)

refers but for the application of regulation 51(1) of the Income Support Regulations(**106**) (notional capital); and

(c) where the claimant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations(**107**) (notional capital).

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to housing benefit in the relevant week, but for regulation 46(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

(a) the amount of housing benefit to which the claimant would have been entitled in the relevant week but for regulation 46(1) and, for the purposes of this sub-paragraph, if the relevant week is a week to which regulation 78(4)(a) refers, that amount shall be determined by dividing the amount of housing benefit to which he would have been so entitled by the number of days in that week for which he was liable to make payments in respect of the dwelling he occupies as his home and multiplying the quotient so obtained by 7;

(b) if the claimant would, but for regulation 51(1) of the Income Support Regulations, have been entitled to income support in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations(**108**) (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income support to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;

(c) if the claimant would, but for regulation 113 of the Jobseeker's Allowance Regulations, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(2) of those Regulations(**109**) (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income-based jobseeker's allowance to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.

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

(a) sub-paragraphs (a) to (c) of paragraph (4) shall apply as if for "relevant week" there were substituted "relevant subsequent week"; and

(b) subject to paragraph (7), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.

(6) The conditions are that—

(a) a further claim is made 26 or more weeks after—

(i) the date on which the claimant made a claim for housing benefit in respect of which he was first treated as possessing the capital in question under regulation 46(1);

(**106**) Regulation 51(1) was amended by regulation 3 of S.R. 1990 No. 346

(**107**) Regulation 113 was amended by S.R. 1997 No. 412, S.R. 1998 No. 326, S.R. 1999 No. 391, S.R. 2000 No. 350, S.R. 2001 No. 151, S.R. 2002 Nos. 128 and 132, S.R. 2003 No. 195, S.R. 2004 No. 389 and S.R. 2005 Nos. 98 and 424

(**108**) The definition of "benefit week" was amended by regulation 2(a) of S.R. 1988 No. 318

(**109**) The definition of "benefit week" was amended by regulation 2(2) of S.R. 1996 No. 358 and regulation 2(2)(a) of S.R. 1996 No. 503

(ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the date on which he last made a claim for housing benefit which resulted in the weekly amount being re-determined, or

(iii) the date on which he last ceased to be entitled to housing benefit,

whichever last occurred; and

(b) the claimant would have been entitled to housing benefit but for regulation 46(1).

(7) The amount as re-determined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.

(8) For the purposes of this regulation—

"part-week" in paragraph (4)(b) and (c) means—

(a) a period of less than a week which is the whole period for which income support, or, as the case may be, an income-based jobseeker's allowance, is payable; and

(b) any other period of less than a week for which it is payable;

"relevant week" means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 46(1)—

(a) was first taken into account for the purpose of determining his entitlement to housing benefit; or

(b) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to housing benefit on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, housing benefit,

and where more than one benefit week is identified by reference to paragraphs (a) and (b) of this definition the later or latest such benefit week;

"relevant subsequent week" means the benefit week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

Capital jointly held

48.—(1) Subject to paragraph (2), except where a claimant possesses capital which is disregarded under regulation 46(5) where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Section shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

(2) Any premises or land not wholly owned by the claimant shall be disregarded for such period as is reasonable in the circumstances to enable the collection of such information as is necessary to determine the treatment of capital in accordance with paragraph (1).

Calculation of tariff income from capital

49.—(1) Except where the circumstances prescribed in paragraph (3) apply to the claimant, where the claimant's capital calculated in accordance with this Part exceeds £6,000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £6,000 but not exceeding £16,000.

(2) Where the circumstances prescribed in paragraph (3) apply to a claimant and that claimant's capital calculated in accordance with this Part exceeds £10,000, it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £10,000 but not exceeding £16,000.

(3) For the purposes of paragraph (2), the prescribed circumstances are that the claimant—

(a) occupies residential accommodation as his home; or

(b) is a person—

(i) to whom on 13th November 2005, paragraph (2) of regulation 7 of the former Regulations as in operation on that date applied, or

(ii) to whom on 13th November 2005, paragraph (5) or (7) of regulation 7 of the former Regulations as in operation on that date applied and continues to apply.

(4) For the purposes of paragraph (3), the claimant shall be treated as—

(a) occupying residential accommodation as his home;

(b) a person to whom regulation 9(1A), as inserted by paragraph 9(2)(a) of Schedule 3 to the Consequential Provisions Regulations (transitional and savings provisions), applies;

(c) a person to whom regulation 9(6), as inserted by paragraph 9(4)(a) of that Schedule, applies; or

(d) a person to whom regulation 9(6), as inserted by paragraph 9(6)(a) of that Schedule, applies,

in any period during which he is treated as occupying the accommodation as his home pursuant to regulation 7(12), (13) or (17).

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

(6) For the purposes of paragraphs (1) and (2), capital includes any income treated as capital under regulation 43.

(7) For the purposes of this regulation and subject to paragraph (8), "residential accommodation" means accommodation which is provided by an establishment—

(a) under Article 15 or 36 of the Health and Personal Social Services Order where board is not available to the claimant and the home in which the accommodation is provided is either owned or managed or owned and managed by a Health and Social Services Board or HSS trust;

(b) which is managed or provided by a body incorporated by Royal Charter or constituted by a statutory provision (other than a Health and Social Services Board or HSS trust) and provides both board and personal care for the claimant and in this sub-paragraph, "personal care" means care which includes assistance with bodily functions where such assistance is required;

(c) which is an Abbeyfield Home,

and in this definition "board" refers to the availability to the claimant in the home in which his accommodation is provided of cooked or prepared food, where the food is made available to him in consequence solely of his paying the charge for the accommodation or any other charge which he is required to pay as a condition of occupying the accommodation, or both those charges and is made available for his consumption without any further charge to him.

(8) Paragraph (7) shall not apply to residential accommodation of the type referred to in sub-paragraphs (a) to (c) of paragraph (7) where such accommodation is residential accommodation for the purpose of regulation 7 unless the claimant is a person to whom paragraphs 10, 11 or 12 of Schedule 2 to the Social Security (Residential Care Homes, Nursing Homes and Independent Hospitals) Regulations (Northern Ireland) 2005(**110**) apply.

(**110**) S.R. 2005 No. 458

PART VII

Students

SECTION 1

General

Interpretation

50.—(1) In this Part—

"academic year" means the period of 12 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(**111**) or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997(**112**) in each case being grants, or grants, loans or other payments as the case may be, for the purpose of assisting students in financial difficulties;

(b) grants made under section 68 of the Further and Higher Education Act 1992(**113**) 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(**114**);

(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(**115**); or

(e) Financial Contingency Funds made available by the National Assembly for Wales;

"contribution" means any contribution in respect of the income of a student or of any other person which the Department, 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(**116**), 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 or civil partner 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;

"covenant income" means the gross income payable to a full-time student under a Deed of Covenant by his parent;

(**111**) S.I. 1993/2810 (N.I. 12)
(**112**) S.I. 1997/1772 (N.I. 15)
(**113**) 1992 c. 13
(**114**) 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)
(**115**) 2000 c. 21
(**116**) 1992 c. 37

"education authority" means a government department, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986(**117**), a local education authority specified in section 12 of the Education Act 1996(**118**), a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973(**119**), any body which is a research council for the purposes of the Science and Technology Act 1965(**120**) or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside the United Kingdom;

"full-time student" 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 or any payment to which paragraph 12 of Schedule 6 or paragraph 50 of Schedule 7 applies;

"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—

(a) in the case of a qualifying course, the date on which the last day of that course falls or the date on which the final examination relating to that course is completed, whichever is the later;

(b) in any other case, the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

"period of study" means—

(a) in the case of a course of study for one year or less, the period beginning with the start of the course and ending with the last day of the course;

(b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, other than the final year of the course, the period beginning with the start of the course or, as the case may be, that year's start and ending with either—

  (i) in a case where the student's grant or loan is assessed at a rate appropriate to his studying throughout the year, or, if he does not have a grant or loan, where a loan would have been assessed at such a rate had he had one, the day before the start of the next year of the course, or

  (ii) in any other case, the day before the start of the recognised summer vacation appropriate to his course;

(c) in the final year of a course of study of more than one year, the period beginning with that year's start and ending with the last day of the course;

"periods of experience" means periods of work experience which form part of a sandwich course;

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

"sandwich course" has the meaning prescribed in regulation 2(6) of the Education (Student Support) Regulations (Northern Ireland) 2005(**121**), regulation 2(6) of the Education (Student

(**117**) S.I. 1986/594 (N.I. 3)
(**118**) 1996 c. 56
(**119**) 1973 c. 65
(**120**) 1965 c. 4
(**121**) S.R. 2005 No. 340

Support) Regulations 2005(**122**) or regulation 5(2) of the Education (Student Loans) (Scotland) Regulations 2000(**123**) as the case may be;

"standard maintenance grant" means—

(a) except where paragraph (b) or (c) applies, in the case of a student attending or undertaking a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 6 to the Students Awards Regulations (Northern Ireland) 2003(**124**) ("the 2003 Regulations") for such a student;

(b) except where paragraph (c) applies, in the case of a student residing at his parent's home, the amount specified in paragraph 3 thereof;

(c) in the case of a student receiving an allowance or bursary under the Education (Scotland) Act 1980, the amount of money specified as "standard maintenance allowance" for the relevant year appropriate for the student set out in the Student Support in Scotland Guide issued by the Student Awards Agency for Scotland(**125**), or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority and paid under the Further and Higher Education (Scotland) Act 1992;

(d) in any other case, the amount specified in paragraph 2(2) of Schedule 6 to the 2003 Regulations other than in head (a) or (b) thereof;

"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(**126**), section 22 of the Teaching and Higher Education Act 1998(**127**) or section 73 of the Education (Scotland) Act 1980 and shall include, in Scotland, a young student's bursary paid under regulation 4(1)(c) of the Students' Allowances (Scotland) Regulations 1999(**128**).

(2) For the purposes of the definition of "full-time student" in paragraph (1), a person shall be regarded as attending or, as the case may be, undertaking a full-time course of study or as being on a sandwich course—

(a) subject to paragraph (3), in the case of a person attending or undertaking a part of a modular course which would be a full-time course of study for the purposes of this Part, for the period beginning on the day on which that part of the course starts and ending—

(i) on the last day on which he is registered with the educational establishment as attending or undertaking that part as a full-time course of study, or

(ii) on such earlier date (if any) as he finally abandons the course or is dismissed from it;

(b) in any other case, throughout the period beginning on the date on which he starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as he finally abandons it or is dismissed from it.

(3) For the purposes of sub-paragraph (a) of paragraph (2), the period referred to in that sub-paragraph shall include—

(**122**) S.I. 2005/52
(**123**) S.S.I. 2000/200
(**124**) S.R. 2003 No. 459
(**125**) The relevant leaflets are SAS2 and SAS4
(**126**) S.I. 1998/1760 (N.I. 14)
(**127**) 1998 c. 30
(**128**) S.I. 1999/1131 (S. 91)

(a) where a person has failed examinations or has failed to successfully complete a module relating to a period when he was attending or undertaking a part of the course as a full-time course of study, any period in respect of which he attends or undertakes the course for the purpose of retaking those examinations or that module;

(b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation immediately follows the last day on which he is required to attend or undertake the course.

(4) In paragraph (2), "modular course" means a course of study which consists of 2 or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

Treatment of students

51. The provisions of Parts II, III and IV shall have effect in relation to students subject to the following provisions of this Part.

SECTION 2

Entitlement and payments in respect of a dwelling

Occupying a dwelling as a person's home

52.—(1) Subject to paragraph (2), a full-time student shall not be treated as occupying a dwelling as his home during any benefit week outside the period of study if he is absent from it for the whole of that week and if the main purpose of his occupation during the period of study would be to facilitate attendance on his course.

(2) The provisions of paragraph (1) shall not apply to any absence occasioned by the need to enter hospital for treatment.

Full-time students to be treated as not liable to make payments in respect of a dwelling

53.—(1) A full-time student shall be treated as if he were not liable to make payments in respect of a dwelling.

(2) Paragraph (1) shall not apply to a full-time student—

(a) who is a person on income support or an income-based jobseeker's allowance;

(b) who is a lone parent;

(c) whose applicable amount would, but for paragraph (1), include the pensioner premium for persons under 75 or, as the case may be, persons 75 or over, higher pensioner premium, disability premium or severe disability premium;

(d) whose applicable amount would include the disability premium but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 167E of the Act(**129**) (incapacity for work: disqualification, etc.);

(e) who is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part XIIA of the Act(**130**) (incapacity for work) for a continuous period of not less than

(**129**) Section 167E was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and amended by paragraph 57 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

(**130**) Part XIIA was inserted by Articles 7 and 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

196 days; and for this purpose any 2 or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;

(f) who has a partner who is also a full-time student, if he or that partner is treated as responsible for a child or young person;

(g) who is a single claimant with whom a child is—

(i) placed by an authority, as defined in Article 2 of the Children Order, under Article 27(2)(a) of that Order (provision of accommodation and maintenance by an authority for children whom it is looking after) or by a voluntary organisation under Article 75(1)(a) of that Order (provision of accommodation by voluntary organisation), or

(ii) in the charge of, under paragraph 4 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998(**131**);

(h) who is—

(i) aged under 19 and whose course of study is not a course of higher education, or

(ii) a qualifying young person or child within the meaning of section 138 of the Act(**132**) (child and qualifying young person);

(i) in respect of whom—

(i) a supplementary requirement has been determined under paragraph 9 of Schedule 6 to the Students Awards Regulations (Northern Ireland) 2003 or a payment has been made under Article 50(3) of the Education and Libraries (Northern Ireland) Order 1986;

(ii) an allowance or, as the case may be, bursary has been granted which includes a sum under paragraph (1)(d) of regulation 4 of the Students' Allowances (Scotland) Regulations 1999 or, as the case may be, under paragraph (1)(d) of regulation 4 of the Education Authority Bursaries (Scotland) Regulations 1995(**133**), in respect of expenses incurred;

(iii) a payment has been made under section 2 of the Education Act 1962(**134**) or under, or by virtue of regulations made under, the Teaching and Higher Education Act 1998;

(iv) a grant has been made under regulation 13 of the Education (Student Support) Regulations (Northern Ireland) 2005 or under regulation 13 of the Education (Student Support) Regulations 2005, or

(v) a supplementary requirement has been determined under paragraph 9 of Schedule 2 to the Education (Mandatory Awards) Regulations 2003,

on account of his disability by reason of deafness; or

(j) who—

(i) immediately before 1st September 1990 was in receipt of income support by virtue of paragraph 7 of Schedule 1 to the Income Support Regulations as then in operation, or

(ii) on or after that date makes a claim for income support or housing benefit (or both) and at any time during the period of 18 months immediately preceding the date of that claim was in receipt of income support either by virtue of that paragraph or regulation 13(2)(b) of those Regulations,

but this sub-paragraph shall cease to apply where the person has ceased to be in receipt of income support for a continuous period of 18 months or more.

(**131**) S.I. 1998/1504 (N.I. 9)
(**132**) Section 138 was substituted by section 2(2) of the Child Benefit Act 2005 (c. 6); *see also* regulation 2 of S.I. 2006/223
(**133**) S.I. 1995/1739 (S. 119)
(**134**) 1962 c. 12

(3) For the purposes of paragraph (2), once paragraph (2)(e) applies to a full-time student, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.

(4) In paragraph (2)(h) reference to a course of higher education is a reference to a course of any description mentioned in Schedule 1 to the Further Education (Northern Ireland) Order 1997.

(5) A full-time student to whom paragraph (2)(i) applies shall be treated as satisfying that sub-paragraph from the date on which he made a request for the supplementary requirement, allowance, bursary or payment, as the case may be.

(6) Paragraph (1) shall not apply to a full-time student for the period specified in paragraph (7) if—

(a) at any time during an academic year, with the consent of the relevant educational establishment, he ceases to attend or undertake a course because he is—

(i) engaged in caring for another person, or

(ii) ill;

(b) he has subsequently ceased to be engaged in caring for that person or, as the case may be, he has subsequently recovered from that illness; and

(c) he is not eligible for a grant or a student loan in respect of the period specified in paragraph (7).

(7) The period specified for the purposes of paragraph (6) is the period not exceeding one year beginning on the day on which he ceased to be engaged in caring for that other person or, as the case may be, the day on which he recovered from that illness and ending on the day before—

(a) the day on which he resumes attending or undertaking the course; or

(b) the day from which the relevant educational establishment has agreed that he may resume attending or undertaking the course,

whichever shall first occur.

Student's eligible housing costs

54.—(1) Subject to paragraphs (2) to (4), housing benefit shall not be payable during the period of study in respect of payments made by a student to an educational establishment which the student is attending.

(2) Subject to paragraph (4), where the educational establishment itself pays rent for the dwelling occupied by the student as his home to a third party (other than to another educational establishment) the provisions of paragraph (1) shall only apply if rent is payable to an education authority which has provided the dwelling in exercise of its functions as an education authority.

(3) Where it appears to the relevant authority that an educational establishment has arranged for accommodation to be provided by a person or body other than itself in order to take advantage of the housing benefit scheme, housing benefit shall not be payable during the period of study in respect of payments made to that person or body by a student.

(4) Housing benefit shall be payable during the period of study in respect of payments made by a student to an educational establishment which the student is attending where the student—

(a) is one who falls within a category specified in regulation 53(2); or

(b) would fall within a category specified in regulation 53(2)(b) to (j) if he were a full-time student.

Student partners

55. Where a claimant is not, but his partner is, a student, the provisions of regulation 54 shall apply as if the claimant were a student.

SECTION 3

Income

Calculation of grant income

56.—(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 disregarded 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;

(h) intended for the child care costs of a child dependant.

(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 £285 in respect of travel costs; and

(b) the sum of £361 towards the costs of books and equipment,

whether or not any such costs are incurred.

(4) There shall also be excluded from a student's grant income the grant for dependants known as the parents' learning allowance paid pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 or section 22 of the Teaching and Higher Education Act 1998.

(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 the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period of study and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study;

(b) in any other case, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period for which it is payable and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period for which it is payable.

(6) Any grant in respect of dependants under Article 44(2) of the Health and Personal Social Services Order (provisions relating to training) and any amount intended for the maintenance of dependants under Part III of Schedule 6 to the Students Awards Regulations (Northern Ireland) 2003

shall be apportioned equally over the period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53 weeks.

(7) In a case where a student is in receipt of a student loan or where he could have acquired a student loan by taking reasonable steps but had not done so, any amount intended for the maintenance of dependants to which neither paragraph (6) nor regulation 60(2) apply, shall be apportioned over the same period as the student's loan is apportioned or, as the case may be, would have been apportioned.

(8) In the case of a student on a sandwich course, any periods of experience within the period of study shall be excluded and the student's grant income shall be apportioned equally between the weeks in the period beginning with the benefit week, the first day of which immediately follows the last day of the period of experience and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study.

Calculation of covenant income where a contribution is assessed

57.—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of his covenant income to be taken into account for that period and any summer vacation immediately following shall be the whole amount of the covenant income less, subject to paragraph (3), the amount of the contribution.

(2) The weekly amount of the student's covenant shall be determined—

(a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or 53, whichever is reasonable in the circumstances; and

(b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution shall be treated as increased by the amount (if any) by which the amount excluded under regulation 56(2)(g) falls short of the amount specified in paragraph 7(2) of Schedule 6 to the Students Awards Regulations (Northern Ireland) 2003 (travel expenditure).

Covenant income where no grant income or no contribution is assessed

58.—(1) Where a student is not in receipt of income by way of a grant the amount of his covenant income shall be calculated as follows—

(a) any sums intended for any expenditure specified in regulation 56(2)(a) to (e) necessary as a result of his attendance on the course shall be disregarded;

(b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded, shall be apportioned equally between the weeks of the period of study;

(c) there shall be disregarded from the amount so apportioned the amount which would have been disregarded under regulation 56(2)(f) and (3) had the student been in receipt of the standard maintenance grant; and

(d) the balance, if any, shall be divided by 52 or 53 whichever is reasonable in the circumstances and treated as weekly income of which £5 shall be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenanted income shall be calculated in accordance with sub-paragraphs (a) to (d) of paragraph (1), except that—

(a) the value of the standard maintenance grant shall be abated by the amount of such grant income less an amount equal to the amount of any sums disregarded under regulation 56(2)(a) to (e); and

(b) the amount to be disregarded under paragraph (1)(c) shall be abated by an amount equal to the amount of any sums disregarded under regulation 56(2)(f) and (g) and (3).

Relationship with amounts to be disregarded under Schedule 6

59. No part of a student's covenant income or grant income shall be disregarded under paragraph 14 of Schedule 6.

Other amounts to be disregarded

60.—(1) For the purposes of ascertaining income other than grant income, covenant income and loans treated as income in accordance with regulation 61, any amounts intended for any expenditure specified in regulation 56(2), necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 56(2) or (3), 57(3), 58(1)(a) or (c) or 61(5) on like expenditure.

(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 Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 or under the Students' Allowances (Scotland) Regulations 1999 that payment shall be disregarded as income.

Treatment of student loans

61.—(1) A student loan shall be treated as income.

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

(a) in respect of a course that is of a single academic year's duration or less, a loan which is payable in respect of that period shall be apportioned equally between the weeks in the period beginning with—

(i) except in a case where head (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of the single academic year;

(ii) where the student is required to start attending the course in August or where the course is less than an academic year's duration, the benefit week, the first day of which coincides with, or immediately follows, the first day of the course,

and ending with the benefit week, the last day of which coincides with, or immediately precedes, 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 the first day of which coincides with or immediately follows, the first day of that academic year and ending with the benefit week, the last day of which coincides with or immediately precedes, the last day of that academic year but excluding any benefit weeks falling entirely within the quarter during which, in the opinion of the Department, the longest of any vacation is taken and for the purposes of this sub-paragraph, "quarter" shall have the same meaning as for the purposes of the Education (Student Support) Regulations (Northern Ireland) 2005;

(c) in respect of the final academic year of a course (not being a course of a single year's duration), a loan which is payable in respect of that final academic year shall be apportioned equally between the weeks in the period beginning with—

(i) except in a case where head (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of that academic year;

(ii) where the final academic year starts on 1st September, the benefit week, the first day of which coincides with, or immediately follows, the earlier of 1st September or the first day of the autumn term,

and ending with the benefit week, the last day of which coincides with, or immediately precedes, 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 benefit week, the first day of which coincides with, or immediately follows, the first day of the autumn term,

and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of June,

and, in all cases, from the weekly amount so apportioned there shall be disregarded £10.

(3) 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.

(4) Where a student is treated as possessing a student loan under paragraph (3), the amount of the student loan to be taken into account as income shall be, subject to paragraph (5)—

(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 the application of a means test.

(5) There shall be deducted from the amount of a student's loan income—

(a) the sum of £285 in respect of travel costs; and

(b) the sum of £361 towards the cost of books and equipment,

whether or not any such costs are incurred.

Treatment of fee loans

62. A loan for fees, known as a fee loan or a fee contribution loan, made pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998, section 22 of the Teaching and Higher Education Act 1998 or section 73(f) of the Education (Scotland) Act 1980, shall be disregarded as income.

Treatment of payments from access funds

63.—(1) This regulation applies to payments from access funds that are not payments to which regulation 66(2) or (3) applies.

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

(3) Subject to paragraph (5) and paragraph 35 of Schedule 6, any payments from access funds which are intended and used for food, household fuel, rent or rates or both or ordinary clothing or

footwear, of a single claimant or any other member of his family shall be disregarded as income to the extent of £20 per week.

(4) For the purposes of paragraph (3), "rent or rates" means eligible rent or rates less any deductions in respect of non-dependants which fall to be made under regulation 72.

(5) 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 that year 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.

Disregard of contribution and rent

64. Where the claimant or his partner is a student and, for the purposes of assessing a contribution to the student's grant or student loan, the other partner's income has been taken into account, an amount equal to that contribution shall be disregarded for the purposes of assessing that other partner's income.

Further disregard of student's income

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

Amounts treated as capital

66.—(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, household fuel, rent or rates or both, ordinary clothing or footwear of a single claimant or, as the case may be, of the claimant or any other member of his family, shall be disregarded as capital but only for a period of 52 weeks from the date of the payment.

(4) In paragraph (3) "rent or rates" means eligible rent or rates less any deductions in respect of non-dependants which fall to be made under regulation 72.

Disregard of changes occurring during summer vacation

67. In calculating a student's income the relevant authority shall disregard any change in the standard maintenance grant, occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of his period of study from the date on which the change occurred to the end of that vacation.

PART VIII

Amount of benefit

Maximum housing benefit

68. The amount of a person's appropriate maximum housing benefit in any week shall be—

(a) 100 per cent. of his eligible rent calculated on a weekly basis in accordance with regulations 78 and 79; and

(b) 100 per cent. of his eligible rates calculated on a weekly basis in accordance with those regulations,

less, in either case, any deductions in respect of non-dependants which fall to be made under regulation 72.

Housing benefit tapers

69. The prescribed percentages for the purpose of section 129(3)(b) of the Act (percentage of excess of income over applicable amount which is deducted from maximum housing benefit) shall be—

(a) in calculating the amount of a rate rebate, 20 per cent.; and

(b) in calculating the amount of a rent rebate or allowance, 65 per cent.

Extended payments

70.—(1) Subject to paragraphs (7) and (8), paragraph (2) shall apply where—

(a) a person ceases to be entitled to housing benefit—

(i) in accordance with regulation 75, and

(ii) the conditions referred to in paragraphs 1 and 2 of Schedule 8 are satisfied in his case; or

(b) a person ceases to be entitled to housing benefit because he has vacated the dwelling which he occupied as his home and the day on which he did so was either in the week in which he took up employment as an employed or self-employed earner, or in the preceding week, and—

(i) he ceased to be entitled to income support or an income-based jobseeker's allowance by reason of taking up employment as an employed or self-employed earner, and

(ii) the conditions referred to in paragraphs 1 and 2 of Schedule 8 are satisfied in his case.

(2) A person to whom paragraph (1) applies shall be treated as having made a claim under this regulation and his housing benefit shall be determined in accordance with Part II of Schedule 8 and any award so determined shall be referred to in these Regulations as an "extended payment".

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

(a) except in a case to which paragraph 7(b) of Schedule 8 applies, the maximum housing benefit of any person mentioned in paragraph (1) shall be that which was applicable to him in the last benefit week of the award of housing benefit which has ceased as mentioned in paragraph (1);

(b) the maximum housing benefit of any person to whom paragraph 7(b) of Schedule 8 applies shall be determined in accordance with paragraph 8 of that Schedule; and

(c) any person who meets the requirements of paragraph (1) shall be treated as possessing no income or capital.

(4) Regulations 80, 81 and 82 shall not apply to a claim pursuant to this regulation and, subject to regulation 78(7), Part IX shall not apply to any payment under it.

(5) In paragraph (1)(a) and (b), references to a "person" include references to a person's partner.

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

(a) the beneficiary shall be treated for the purposes of these Regulations or, in a case to which regulation 5(2) applies, of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(**135**) as though he were entitled to and in receipt of housing benefit—

(i) during the 4 weeks immediately following the last day of his entitlement to housing benefit, or

(ii) until the date on which his liability for rent or rates or both ends,

whichever occurs first; and

(b) any claim for housing benefit made by the beneficiary within the period which under sub-paragraph (a) applies in his case or the 4 weeks thereafter shall be treated as having been made in respect of a period beginning immediately after the end of his previous award of housing benefit.

(7) This regulation shall not apply to a claimant where, on the day before his entitlement to income support ceased, regulation 6(5) of the Income Support Regulations (remunerative work: housing costs) applied to him.

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

Extended payments (severe disablement allowance and incapacity benefit)

71.—(1) Paragraph (2) shall apply where—

(a) a person ceases to be entitled to housing benefit—

(i) in accordance with regulation 76, and

(ii) the condition referred to in paragraph 1 of Schedule 9 is satisfied in his case; or

(b) a person ceases to be entitled to housing benefit because he has vacated the dwelling which he occupied as his home and the day on which he did so was either in the week in which he took up employment as an employed or self-employed earner, or in the preceding week, and—

(i) he ceased to be entitled to severe disablement allowance or incapacity benefit by reason of taking up employment as an employed or self-employed earner;

(ii) he had been entitled to and in receipt of severe disablement allowance, incapacity benefit or a combination of severe disablement allowance and incapacity benefit for a continuous period of at least 26 weeks;

(iii) he was not entitled to and in receipt of income support, and

(iv) the condition referred to in paragraph 1 of Schedule 9 is satisfied in his case.

(2) A person to whom paragraph (1) applies shall be treated as having made a claim under this regulation and his housing benefit shall be determined in accordance with Schedule 9 and any award so determined shall be referred to in these Regulations as an "extended payment (severe disablement allowance and incapacity benefit)".

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

(**135**) S.R. 2006 No. 406

(a) except in a case to which sub-paragraph (b) applies the maximum housing benefit of any person mentioned in paragraph (1) shall be that which was applicable to him in the last week of the award of housing benefit which has ceased as mentioned in paragraph (1);

(b) the maximum housing benefit of any person the amount of whose extended payment (severe disablement allowance and incapacity benefit) is calculated in accordance with paragraph 6(b)(i) of Schedule 9 shall be determined in accordance with paragraph 7 of that Schedule;

(c) except in a case to which sub-paragraph (d) applies, any person who meets the requirements of paragraph (1) shall be treated as possessing the same amounts of income and capital as they possessed in the last week of the award of housing benefit which has ceased as mentioned in paragraph (1); and

(d) any person whose maximum housing benefit is determined in accordance with paragraph 7 of Schedule 9 shall be treated as possessing no income or capital.

(4) Regulations 80, 81 and 82 shall not apply to a claim pursuant to this regulation and, subject to regulation 78(7), Part IX shall not apply to any payment under it.

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

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

(a) the beneficiary shall be treated for the purpose of these Regulations as though he were entitled to and in receipt of housing benefit—

(i) during the 4 weeks immediately following the last day of his entitlement to housing benefit, or

(ii) until the date on which his liability for rent or rates or both ends,

whichever occurs first; and

(b) any claim for housing benefit made by the beneficiary within the period which under sub-paragraph (a) applies in his case or the 4 weeks thereafter shall be treated as having been made in respect of a period beginning immediately after the end of his previous award of housing benefit.

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

Non-dependant deductions

72.—(1) Subject to the following provisions of this regulation, the deductions referred to in regulation 68 shall be—

(a) in respect of a non-dependant aged 18 or over in remunerative work—

(i) in calculating the amount of a rent rebate or allowance, £47.75 per week;

(ii) in calculating the amount of a rate rebate, £6.95 per week;

(b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply—

(i) in calculating the amount of a rent rebate or allowance, £7.40 per week;

(ii) in calculating the amount of a rate rebate, £2.30 per week.

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

(a) less than £106.00, the deduction to be made under this regulation in respect of a rent rebate or allowance shall be that specified in paragraph (1)(b)(i);

(b) not less than £106.00 but less than £157.00, the deduction to be made under this regulation in respect of a rent rebate or allowance shall be £17.00;

(c) not less than £157.00 but less than £204.00, the deduction to be made under this regulation in respect of a rent rebate or allowance shall be £23.35;

(d) not less than £204.00 but less than £271.00, the deduction to be made under this regulation in respect of a rent rebate or allowance shall be £38.20;

(e) not less than £271.00 but less than £338.00, the deduction to be made under this regulation in respect of a rent rebate or allowance shall be £43.50;

(f) less than £157.00, the deduction to be made under this regulation in respect of a rate rebate shall be that specified in paragraph (1)(b)(ii);

(g) not less that £157.00 but less than £271.00, the deduction to be made under this regulation in respect of a rate rebate shall be £4.60;

(h) not less than £271.00 but less than £338.00, the deduction to be made under this regulation in respect of a rate rebate shall be £5.80.

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

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

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple or members of a polygamous marriage), the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the payments in respect of the dwelling payable by each of them.

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

(a) blind or treated as blind by virtue of paragraph 13 of Schedule 4; or

(b) receiving in respect of himself either—

(i) attendance allowance, or

(ii) the care component of the disability living allowance.

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

(a) although he resides with the claimant, it appears to the appropriate authority that his normal home is elsewhere;

(b) he is in receipt of a training allowance paid in connection with a Jobskills programme established under section 1(1) of the 1950 Act(**136**);

(c) he is a full-time student during a period of study within the meaning of Part VII;

(d) he is a full-time student and during a recognised summer vacation appropriate to his course he is not in remunerative work;

(**136**) Section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(e) he is a full-time student and the claimant or his partner has attained the age of 65; or

(f) he is not residing with the claimant because he has been a patient for a period in excess of 52 weeks, or a prisoner, and for these purposes—

(i) "patient" has the meaning given in paragraph (18) of regulation 7;

(ii) where a person has been a patient for 2 or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods, and

(iii) "prisoner" means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person who is detained in hospital under the Mental Health (Northern Ireland) Order 1986(**137**).

(8) No deduction shall be made in calculating the amount of—

(a) a rent rebate or allowance in respect of a non-dependant aged less than 25 who is on income support or an income-based jobseeker's allowance;

(b) a rate rebate in respect of a non-dependant who is on income support or an income-based jobseeker's allowance.

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

(a) any attendance allowance or disability living allowance received by him;

(b) any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds which had his income fallen to be calculated under regulation 37 would have been disregarded under paragraph 24 of Schedule 6; and

(c) any payment which had his income fallen to be calculated under regulation 37 would have been disregarded under paragraph 37 of Schedule 6.

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

Minimum housing benefit

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

PART IX

Calculation of weekly amounts and changes of circumstances

Date on which entitlement is to commence

74.—(1) Subject to paragraphs (2) and (3), a person who makes a claim and is otherwise entitled to housing benefit shall be entitled to that benefit from the benefit week following the date on which his claim is or is treated as made.

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

(**137**) S.I. 1986/595 (N.I. 4)

(3) A claimant shall become entitled to housing benefit from the benefit week in which the first day in respect of which his claim is made falls, where—

(a) he is otherwise entitled to housing benefit;

(b) paragraph (2) does not apply to him; and

(c) he becomes liable in that benefit week to make payments, which fall due on a daily basis, in respect of a hostel which he occupies as his home.

Date on which housing benefit is to end

75. A claimant's entitlement to housing benefit shall cease at the end of the benefit week in which entitlement to income support or income-based jobseeker's allowance ceases where—

(a) the claimant or his partner was entitled to and in receipt of income support or an income-based jobseeker's allowance or that claimant and his partner were entitled to and in receipt of a joint-claim jobseeker's allowance and that entitlement has ceased;

(b) that entitlement to income support or income-based jobseeker's allowance has ceased by reason of the claimant or his partner—

(i) commencing employment as an employed or self-employed earner;

(ii) increasing their earnings from such employment, or

(iii) increasing the number of hours worked in such employment;

(c) the claimant had been entitled to and in receipt of income support or jobseeker's allowance for a continuous period of at least 26 weeks before the day on which his entitlement to income support or income-based jobseeker's allowance ceased, and for the purposes of this sub-paragraph—

(i) a claimant satisfies the conditions of this sub-paragraph if he has been entitled to and in receipt of a combination of income support and a jobseeker's allowance for at least 26 weeks;

(ii) references to the claimant include references to his partner;

(iii) a reference to the claimant being entitled to and in receipt of a jobseeker's allowance shall include a reference to the claimant and his partner being entitled to and in receipt of a joint-claim jobseeker's allowance; and

(d) that work, increase in earnings or, as the case may be, increase in hours is expected to last at least 5 weeks or more.

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

76. A claimant's entitlement to housing benefit shall cease at the end of the benefit week in which entitlement to severe disablement allowance or incapacity benefit ceases where—

(a) the claimant or his partner was not entitled to and in receipt of income support but was entitled to and in receipt of severe disablement allowance or incapacity benefit and that entitlement has ceased;

(b) that entitlement to severe disablement allowance or incapacity benefit has ceased by reason of the claimant or his partner—

(i) commencing employment as an employed or self-employed earner;

(ii) increasing their earnings from such employment, or

(iii) increasing the number of hours worked in such employment;

(c) the claimant had been entitled to and in receipt of severe disablement allowance or incapacity benefit for a continuous period of at least 26 weeks before the day on which his entitlement to severe disablement allowance or incapacity benefit ceased, and for the purposes of this sub-paragraph—

(i) a claimant satisfies the conditions of this sub-paragraph if he has been entitled to and in receipt of a combination of severe disablement allowance and incapacity benefit for at least 26 weeks;

(ii) references to the claimant include references to his partner; and

(d) that work, increase in earnings, or as the case may be, increase in hours is expected to last at least 5 weeks or more.

Date on which change of circumstances is to take effect

77.—(1) Except in cases where regulation 31 or regulation 8(3) of the Decisions and Appeals Regulations applies and subject to the following provisions of this regulation, and to regulation 78(6), a change of circumstances which affects entitlement to, or the amount of, housing benefit ("change of circumstances") shall take effect from the first day of the benefit week following the date on which the change of circumstances actually occurs, and where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs shall be the day immediately following the last day of entitlement to that benefit.

(2) Subject to paragraph (10), except in a case where regulation 8(3) of the Decisions and Appeals Regulations applies, where the change of circumstances is a change in the amount of rent or rates payable in respect of a dwelling, that change shall take effect from the day on which it actually occurs.

(3) Subject to paragraphs (10) and (11), except in a case where regulation 8(3) of the Decisions and Appeals Regulations applies, where the change of circumstances is—

(a) that a person moves into a new dwelling occupied as the home; or

(b) any other event which—

(i) entitles a person to be treated as occupying 2 dwellings as his home under regulation 7(6), or

(ii) brings to an end a person's right to be treated as occupying 2 dwellings as his home under that regulation, in a case where he has, immediately prior to the event, been treated as occupying 2 dwellings as his home,

that change of circumstances shall take effect on the day on which it actually occurs.

(4) Subject to paragraph (10), where the change of circumstances is the expiry of a maximum period of time, referred to in regulation 7(6), for which a person can be treated as occupying 2 dwellings as his home, that change shall take effect on the day after the last day of that period.

(5) Subject to paragraph (10), where the change of circumstances is an amendment to these Regulations that change, subject to regulation 78(6), shall take effect as follows—

(a) where the amendment is made by an order under section 132 of the Administration Act(**138**) (annual up-rating of benefits)—

(i) in a case in which the claimant's weekly amount of eligible rent falls to be calculated in accordance with regulation 78(2)(b) or (c), from 1st April;

(ii) in any other case, from the first Monday in April,

in the year in which that order comes into operation;

(**138**) Section 132 was amended by paragraph 41 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 (c. 49)

(b) in respect of any other amendment, from the date on which the amendment of these Regulations comes into operation in the particular case.

(6) Subject to paragraph (10), if 2 or more changes of circumstances occurring in the same benefit week would, but for this paragraph, take effect in different benefit weeks in accordance with this regulation, they shall all take effect on the first day of the benefit week in which they occur, unless a change taking effect under paragraphs (2), (3) or (4) takes effect in that week, in which case the changes shall all take effect on the day on which that change takes effect.

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

(a) a change of circumstances takes effect in accordance with paragraph (5)(a)(ii);

(b) one or more changes of circumstances occur to which paragraph (1) applies; and

(c) no other change of circumstances occurs to which this regulation applies,

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

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

(9) Without prejudice to paragraph (8), where the change of circumstances is the payment of income, or arrears of income, in respect of a past period, the change of circumstances shall take effect from the first day on which such income, had it been timeously paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of these Regulations.

(10) Subject to paragraph (11), where a change of circumstances occurs which has the effect of bringing entitlement to an end it shall take effect on the first day of the benefit week following the benefit week in which that change actually occurs except in a case where a person is liable to make payments, which fall due on a daily basis, in respect of a hostel in which case that change shall take effect on the day on which it actually occurs.

(11) Where the change of circumstances is that a person moves to a new dwelling and immediately after the move he is treated as occupying his former dwelling as his home in accordance with regulation 7(7) or (10) then that change of circumstances shall take effect on the day after the last day for which he is treated as liable to make payments in respect of the former dwelling in accordance with whichever of those regulations applies in his case.

Calculation of weekly amounts

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

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

(a) subject to paragraph (4), where rent is payable at intervals of one week or a multiple thereof, the amount of eligible rent payable weekly or, where it is payable at intervals of a multiple of a week, the amount determined by dividing the amount of eligible rent payable by the number equal to the number of weeks in respect of which it is payable; or

(b) subject to paragraph (4), where the rent is payable at intervals of a calendar month or multiples thereof, the amount determined by dividing the amount payable by the number equal to the number of calendar months in respect of which it is payable, multiplying by 12 and dividing by 52;

(c) subject to paragraph (4), where the rent is payable at intervals of a day or multiples thereof, the amount determined by dividing the amount payable by the number equal to the number of days in respect of which it is payable and multiplying by 7.

(3) The weekly amount of a claimant's eligible rates shall be—

(a) where payments by way of rates are made together with payments of rent, the amount calculated as if those payments were rent under paragraph (2);

(b) subject to paragraph (4), where the rates are payable at intervals of a calendar month or multiples thereof, the amount determined by dividing the amount payable by the number equal to the number of calendar months in respect of which it is payable, multiplying by 12 and dividing by 52;

(c) subject to paragraph (4), where the rates are payable at intervals of a day or multiples thereof, the amount determined by dividing the amount payable by the number equal to the number of days in respect of which it is payable and multiplying by 7.

(4) In a case—

(a) to which regulation 74(2) or (3) applies, his eligible rent or rates for the benefit week in which he becomes liable to make payments in respect of a dwelling which he occupies as his home shall be calculated by multiplying his daily rent or rates by the number equal to the number of days in that benefit week for which he is liable to make such payments;

(b) where a change of circumstances takes effect in a benefit week under regulation 77(3), (but is not a change described in sub-paragraph (c)(ii) of this paragraph), (4), (10) or (11) other than on the first day of a benefit week then the claimant's eligible rent or rates for that benefit week shall be calculated by multiplying his daily rent or rates by the appropriate number of days in that benefit week;

(c) where—

(i) the amounts of eligible rent or rates which the claimant is liable to pay in respect of a dwelling is altered and that change of circumstances takes effect under regulation 77(2), or

(ii) the claimant—

(aa) moves to a new dwelling occupied as the home;

(bb) is not entitled to be treated, immediately after that move, as occupying 2 dwellings as his home or as occupying his former dwelling as his home; and

(cc) that change of circumstances takes effect under regulation 77(3),

other than on the first day of a benefit week, then the claimant's eligible rent or rates for that benefit week shall be calculated by multiplying his old and new daily rent or rates by the number equal to the number of days in that week which relate respectively to the old and new amounts which he is liable to pay.

(5) In the case of a claimant whose weekly eligible rent or rates falls to be calculated in accordance with paragraph (4)(a) or (b) by reference to the daily rent or rates in his case, his weekly applicable amount, weekly income, the weekly amount of any non-dependant deductions and the minimum amount payable in his case shall be calculated in the same manner as his weekly eligible rent or rates by reference to the amounts determined in his case in accordance with Parts V to VIII.

(6) Where a change in the amount of a claimant's applicable amount, income or non-dependant deductions falls to be taken into account in the same benefit week as a change in his eligible rent or rates to which paragraph (4)(c) applies, it shall be taken into account in that week on a daily basis in the same manner and as if it had occurred on the same day as that change in his eligible rent or rates.

(7) In any case where a claimant has received an extended payment or an extended payment (severe disablement allowance and incapacity benefit), his entitlement shall be adjusted in such

circumstances and by such amount as are prescribed in Part III of Schedule 8 or paragraph 10 of Schedule 9, as the case may be.

(8) Any amount determined under these Regulations may, if it is appropriate, be rounded to the nearest whole penny by disregarding any amount less than half a penny and treating any amount of half a penny or more as a whole penny.

(9) In this regulation "daily rent or rates" shall mean the amount determined by dividing by 7 the amount determined under whichever sub-paragraph of paragraph (2) or (3) is appropriate in each case.

(10) Where a claimant is entitled to benefit in respect of 2 (but not more than 2) dwellings in accordance with regulation 7(6) his eligible rent or rates shall be calculated in respect of each dwelling in accordance with this regulation.

Rent and rate-free periods

79.—(1) This regulation applies to a claimant for any period (referred to in this regulation as a rent-free period) in, or in respect of, which he is not liable to pay rent or to make a payment by way of rates made together with rent except for any period to which regulation 8(1)(d) applies.

(2) In the case of the beginning or ending of a claimant's rent-free period, his eligible rent for the benefit week in which the rent-free period begins and ends shall be calculated on a daily basis as if those benefit weeks were weeks to which regulation 78(4) applies.

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

(a) in a case to which regulation 78(2)(a) applies, the amounts determined in his case in accordance with Parts V to VIII shall be multiplied by 52 or 53, whichever is appropriate, and divided by the number equal to the number of weeks in that 52 or 53 week period in respect of which he is liable to pay rent;

(b) subject to paragraph (4), in a case to which regulation 78(2)(b) or (c) applies, the amounts determined in his case in accordance with Parts V to VIII shall be multiplied by 365 or 366, whichever is appropriate, and divided by the number of days in that 365 or 366 day period in respect of which he is liable to pay rent.

(4) In a case to which paragraph (3)(b) applies, where either regulation 78(5) or (6) also applies or it is the beginning or end of a rent-free period, the weekly amounts referred to in paragraph (3) shall first be calculated in accordance with sub-paragraph (b) of that paragraph and then determined on a daily basis in the same manner as the claimant's eligible rent or rates.

PART X

Claims

Who may claim

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

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

(a) a controller has been appointed by the High Court with power to claim, or as the case may be, receive benefit on his behalf; or

(b) an attorney with a general power or a power to claim or, as the case may be, receive benefit, has been appointed by that person under the Powers of Attorney Act (Northern Ireland) 1971(**139**) or the Enduring Powers of Attorney (Northern Ireland) Order 1987(**140**),

that controller or attorney, as the case may be, may make a claim on behalf of that person.

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

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

(a) it may at any time revoke the appointment;

(b) the person appointed may resign his office after having given 4 weeks notice in writing to the relevant authority of his intention to do so;

(c) any such appointment shall terminate when the relevant authority is notified that a controller or an attorney has been appointed.

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

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

Time and manner in which claims are to be made

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

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

(3) Each relevant authority shall notify the Department of the address to which claims delivered or sent to the appropriate office are to be forwarded.

(4) A claim—

(a) may be sent or delivered to the appropriate office where the claimant or his partner is also claiming income support, state pension credit or a jobseeker's allowance;

(b) where it has not been sent or delivered to the appropriate office, shall be sent or delivered to the designated office;

(c) sent or delivered to the appropriate office shall be forwarded to the relevant authority within 2 working days of the date of the receipt of the claim at the appropriate office, or as soon as practicable thereafter;

(d) where the claimant has attained the qualifying age for state pension credit, may be sent or delivered to an authorised office.

(**139**) 1971 c. 33 (N.I.)
(**140**) S.I. 1987/1627 (N.I. 16)

(5) Subject to paragraph (10), the date on which a claim is made shall be—

(a) in a case where an award of income support, or an income-based jobseeker's allowance has been made to the claimant or his partner and the claim for housing benefit is made within one month of the date on which the claim for that income support or jobseeker's allowance was received at the appropriate office, the first day of entitlement to income support or an income-based jobseeker's allowance arising from that claim; and for the purposes of this sub-paragraph a person who has an award entitling him to an income-based jobseeker's allowance shall be treated as also entitled to an income-based jobseeker's allowance for any days which immediately precede the first day in that award and on which in accordance with paragraph 4 of Schedule 1 to the Jobseekers Order (waiting days) he would not be entitled to that allowance;

(b) in a case where a claimant or his partner is a person on income support or an income-based jobseeker's allowance and he becomes liable for the first time to make payments in respect of the dwelling which he occupies as his home, where the claim is received at the designated office or appropriate office within one month of the claimant first becoming liable for such payments, the date he became liable for those payments;

(c) in a case where the claimant is the former partner of a person who was, at the date of his death or their separation, entitled to housing benefit and the claimant makes a claim within one month of the date of the death or the separation, that date;

(d) except where sub-paragraph (a), (b) or (c) is satisfied, in a case where a properly completed claim is received in a designated office, an authorised office or an appropriate office within one month, or such longer period as the relevant authority considers reasonable, of the date on which the claim form was issued following the claimant first notifying, by whatever means, a designated office, an authorised office or an appropriate office of his intention of making a claim, the date of first notification; and

(e) in any other case, the date on which the claim is received at the designated office, authorised office or appropriate office.

(6) Where a claim received at the designated office has not been made in the manner prescribed in paragraph (1), that claim is for the purposes of these Regulations defective.

(7) Where a claim is defective because—

(a) it was made on the form approved for the purpose but that form is not accepted by the relevant authority as being properly completed; or

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

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

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

(a) where paragraph (7)(a) applies, the authority receives at the designated office the properly completed claim or the information requested to complete it or the evidence within one month of the request, or such longer period as the relevant authority may consider reasonable; or

(b) where paragraph (7)(b) applies—

(i) the approved form sent to the claimant is received at the designated office properly completed within one month of it having been sent to him; or, as the case may be,

(ii) the claimant supplies whatever information or evidence was requested under paragraph (7) within one month of the request,

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

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

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

(11) In the case of a person who has attained, or whose partner has attained, the age of 59 years and 35 weeks, paragraph (10) shall apply as if for the reference to the thirteenth benefit week, there was substituted a reference to the seventeenth benefit week.

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

(a) the first day from which he had continuous good cause; or

(b) the day 52 weeks before the date of the claim for backdating,

whichever fell later.

(13) In this regulation "authorised office" means an office which is nominated by the Department and authorised by the relevant authority for receiving claims for decision by the relevant authority.

Evidence and information

82.—(1) Subject to paragraph (2) and to paragraph 5 of Schedule A1(**141**) (treatment of claims for housing benefit by refugees), a person who makes a claim, or a person to whom housing benefit has been awarded, shall furnish such certificates, documents, information and evidence in connection with the claim or the award, or any question arising out of the claim or the award, as may reasonably be required by the relevant authority in order to determine that person's entitlement to, or continuing entitlement to, housing benefit and shall do so within one month of being required to do so or such longer period as the relevant authority may consider reasonable.

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

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

(a) inform the claimant or the person to whom housing benefit has been awarded of his duty under regulation 84 to notify the designated office of any change of circumstances; and

(b) without prejudice to the extent of the duty owed under regulation 84, indicate to him either orally or by notice or by reference to some other document available to him on application and without charge, the kind of change of circumstances which is to be notified.

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

(a) a payment which is—

(i) disregarded under paragraph 24 of Schedule 6 or paragraph 35 of Schedule 7, and

(**141**)*See*, for Schedule A1, paragraph 2(2) of Schedule 4 to S.R. 2006 No. 407

(ii) made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund;

(b) a payment which is disregarded under paragraph 37 of Schedule 6 or paragraph 25 of Schedule 7, other than a payment made under the Independent Living Funds;

(c) a payment which is disregarded under regulation 72(9)(b) or (c) other than a payment made under the Independent Living Funds.

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

(a) the name and address of the pension fund holder;

(b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

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

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

(a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;

(b) in the case of—

(i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme, or

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

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

Amendment and withdrawal of claim

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

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

Duty to notify changes of circumstances

84.—(1) Subject to paragraph (2), if at any time between the making of a claim and a decision being made on it, or during the award of housing benefit, there is a change of circumstances which the claimant, or any person by whom or on whose behalf sums payable by way of housing benefit are receivable, might reasonably be expected to know might affect the claimant's right to, the amount

of or the receipt of housing benefit, that person shall be under a duty to notify that change of circumstances by giving notice in writing to the designated office.

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

(a) the amount of rent and rates payable to the Executive;

(b) the amount of rates payable to the Department of Finance and Personnel;

(c) the age of the claimant or that of any member of his family or of any non-dependants;

(d) these Regulations;

(e) in the case of a claimant on income support or an income-based jobseeker's allowance, any circumstances which affect the amount of income support or an income-based jobseeker's allowance but not the amount of housing benefit to which he is entitled, other than the cessation of that entitlement to income support or an income-based jobseeker's allowance.

(3) Notwithstanding paragraph (2)(c) or (e) a claimant shall be required by paragraph (1) to notify the designated office of any change in the composition of his family arising from the fact that a person who was a member of his family is now no longer such a person because he ceases to be a child or young person.

PART XI

Decisions on questions

Decisions by a relevant authority

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

(2) The relevant authority shall make a decision on each claim within 14 days of the provisions of regulations 81 and 82 being satisfied or as soon as reasonably practicable thereafter.

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

(a) made the notification specified in paragraph 2 of Schedule 8 within 14 days from the day immediately after the day on which his entitlement to income support or an income-based jobseeker's allowance ceased ("the appropriate day") and is treated as having claimed an extended payment under regulation 70(2); and

(b) has made a claim, which meets the requirements of regulation 81(1), (6) and (9), within 14 days of the appropriate day,

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

Notification of decisions

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

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

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

and every notification shall include a statement as to the matters set out in Schedule 10.

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

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

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

PART XII

Payments

Time and manner of payment

87.—(1) Subject to paragraphs (2) and (3) and regulations 89 to 95 the relevant authority shall pay housing benefit to which a person is entitled under these Regulations at such time and in such manner as is appropriate, having regard to—

(a) the times at which and the frequency with which a person's liability to make payment of rent or rates arises; and

(b) the reasonable needs and convenience of the person entitled thereto.

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

(3) Subject to regulations 89 to 94, the relevant authority shall make the first payment of any housing benefit awarded by it within 14 days of the receipt of the claim at the designated office or, if that is not reasonably practical, as soon as possible thereafter.

Circumstances in which a rate rebate may be treated as if it fell to be paid as a rent allowance

88. The circumstances in which a rate rebate may be treated as if it fell to be paid as a rent allowance are that a person is liable to make payments by way of rates or an amount treated as a payment of rates by virtue of regulation 12(2), other than to the Department of Finance and Personnel.

Frequency of payment of a rent allowance

89.—(1) Subject to the following provisions of this regulation any rent allowance other than a payment made in accordance with regulation 87(2) or (3) or 90 shall be paid at intervals of 2 or 4 weeks or one month or, with the consent of the person entitled, at intervals greater than one month.

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

(3) Except in a case to which regulation 93(2) applies and subject to paragraph (4), this paragraph applies where payment of a rent allowance is being made to a landlord (which for these purposes has the same meaning as in regulations 92 and 93, when that payment shall be made—

(a) at intervals of 4 weeks; and

(b) at the end of the period in respect of which it is made.

(4) Where paragraph (3) applies—

(a) in a case where the liability in respect of which the rent allowance is paid is monthly, the Executive may make payment at intervals of one month;

(b) in a case where the Executive is paying a rent allowance to a landlord in respect of more than one claimant, then the first such payment in respect of any claimant may be made to that landlord at such lesser interval as the Executive considers is in the best interest of the efficient administration of housing benefit.

(5) Except in a case to which paragraph (3) applies, where a person's weekly entitlement to a rent allowance is more than £2 he may require payment at 2 weekly intervals and the Executive shall pay at 2 weekly intervals in such a case.

(6) Except in a case to which paragraph (3) applies, the Executive may pay a rent allowance at weekly intervals where either—

(a) it considers that unless the rent allowance is paid at weekly intervals an overpayment is likely to occur; or

(b) the person entitled is liable to pay his rent weekly and it considers that it is in his interest that his allowance be paid weekly.

(7) Subject to paragraphs (2), (3) and (5), the Executive may pay a rent allowance to a student once a term.

Payment on account of a rent allowance

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

(a) such information which may at the time be available to it concerning the claimant's circumstances; and

(b) any relevant decision made by the Executive in accordance with Schedule 2.

(2) The notice of award of any payment on account of a rent allowance made under paragraph (1) shall contain a notice to the effect that if on the subsequent decision of the claim the person is not entitled to a rent allowance, or is entitled to an amount of rent allowance less than the amount of the payment on account, the whole of the amount paid on account or the excess of that amount over the entitlement to an allowance, as the case may be, will be recoverable from the person to whom the payment on account was made.

(3) Where on the basis of the subsequent decision the amount of rent allowance payable differs from the amount paid on account under paragraph (1), future payments of rent allowance shall be increased or reduced to take account of any underpayment or, as the case may be, overpayment.

Payment to be made to a person entitled

91.—(1) Subject to regulations 92 to 94 and the following provisions of this regulation, payment of any rent allowance to which a person is entitled shall be made to that person.

(2) Where a person other than a person who is entitled to a rent allowance or rate rebate made the claim and that first person is a person referred to in regulation 80(2), (3) or (5), payment may be made to that person.

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

Circumstances in which payment is to be made to a landlord or the Department of Finance and Personnel

92.—(1) Subject to paragraph (2) and paragraph 8(4) of Schedule A1, a payment of rent allowance or rate rebate shall be made to a landlord (and in this regulation the "landlord" includes a person to whom rent or sums by way of rates are payable by the person entitled to that allowance or rebate)—

(a) where under regulations made under the Administration Act an amount of income support or a jobseeker's allowance payable to the claimant or his partner is being paid direct to the landlord; or

(b) where sub-paragraph (a) does not apply and the person is in arrears of an amount equivalent to 6 weeks or more of the amount he is liable to pay his landlord as rent or rates, except where it is in the overriding interest of the claimant not to make direct payments to the landlord.

(2) Any payment of rent allowance made to a landlord pursuant to this regulation or to regulation 93 shall be to discharge, in whole or in part, the liability of the claimant to pay rent or rates or both to that landlord in respect of the dwelling concerned, except in so far as—

(a) the claimant had no entitlement to the whole or part of that rent allowance so paid to his landlord; and

(b) the overpayment of rent allowance resulting was recovered in whole or in part from that landlord.

(3) Where the person is liable to pay rates to the Department of Finance and Personnel and the circumstances in paragraph 1(a) or (b) applies the amount payable by way of rate rebate shall be paid direct to that Department.

(4) Where the Executive is not satisfied that the landlord is a fit and proper person to be the recipient of a payment of rent allowance or rate rebate no such payment shall be made direct to him under paragraph (1).

Circumstances in which payment may be made to a landlord or the Department of Finance and Personnel

93.—(1) Subject to paragraph 8(4) of Schedule A1, where regulation 92 does not apply but subject to paragraph (3) of this regulation, a payment of a rent allowance or rate rebate may nevertheless be made to a person's landlord where—

(a) the person has requested or consented to such payment;

(b) payment to the landlord is in the interest of the claimant and his family; or

(c) the person has ceased to reside in the dwelling in respect of which the allowance or rebate was payable and there are outstanding payments of rent or rates but any payment under this sub-paragraph shall be limited to an amount equal to the amount of rent outstanding.

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

(a) the claimant has not already discharged his liability to pay his landlord for the period in respect of which any payment is to be made; and

(b) it would be in the interests of the efficient administration of housing benefit,

a first payment of a rent allowance following the making of a decision on a claim or a supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**142**) may be made, in whole or in part, by sending to the claimant an instrument of payment payable to that landlord.

(**142**)2000 c. 4 (N.I.)

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

(a) not make direct payments to the landlord in accordance with paragraph (1); or

(b) make such payments to the landlord where the Executive is satisfied that it is nonetheless in the best interests of the claimant and his family that the payments be made.

(4) Where the person is liable to pay rates to the Department of Finance and Personnel and the circumstances in paragraph (1)(a), (b) or (c) or (2) applies the amount payable by way of a rate rebate may be paid direct to that Department.

(5) In this regulation "landlord" has the same meaning as in regulation 92 and paragraph (2) of that regulation shall have effect for the purposes of this regulation.

Payment on death of the person entitled

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

(2) For the purposes of paragraph (1) "next of kin" means the persons who would take beneficially on an intestacy under the provisions of Part II of the Administration of Estates Act (Northern Ireland) 1955(**143**).

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

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

(5) Subject to paragraph (3), where the relevant authority determines, before the death of the person first mentioned in paragraph (1), that a rent allowance or rate rebate was payable to his landlord in accordance with regulation 92 or 93, that authority shall pay to that landlord so much of that allowance or rebate as does not exceed the amount of rent or rates outstanding at the date of the person's death.

Offsetting

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

(2) Where an amount has been deducted under regulation 101(1) an equivalent sum shall be offset against any arrears of entitlement under the subsequent decision except to the extent that the sum exceeds the arrears and shall be treated as properly paid on account of them.

(3) No amount may be offset under paragraph (1) which has been determined to be an overpayment within the meaning of regulation 96.

(**143**) 1955 c. 24 (N.I.)

PART XIII

Overpayments

Meaning of overpayment

96. In this Part, "overpayment" means any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations including any excess of rebate (whether on the initial decision or as subsequently revised or superseded or further revised or superseded) and includes any amount paid on account under regulation 90 which is in excess of the entitlement to housing benefit as subsequently decided.

Recoverable overpayments

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

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

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

(a) the relevant authority;

(b) an officer or person acting for that authority;

(c) an officer of—

(i) the Department;

(ii) the Department for Employment and Learning;

(iii) Revenue and Customs,

acting as such; or

(d) a person providing services to either Department mentioned in sub-paragraph (c) or to the Commissioners for Her Majesty's Revenue and Customs,

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

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

Person from whom recovery may be sought

98.—(1) For the purposes of section 73(3)(a) of the Administration Act(**144**) (prescribed circumstances in which an amount recoverable shall not be recovered from the person to whom it was paid), the prescribed circumstance is—

(a) housing benefit has been paid to a landlord in accordance with regulation 92 or 93;

(b) the landlord has notified the Executive or the Department in writing that he suspects that there has been an overpayment;

(**144**) Section 73(3) was substituted by section 62 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.))

(c) the Executive is satisfied that the overpayment did not occur as a result of any change of dwelling occupied by the claimant as his home;

(d) it appears to the Executive that, on the assumption that there has been an overpayment—

(i) there are grounds for instituting proceedings against any person for an offence under section 105A(**145**) or 106(1)(**146**) of the Administration Act (dishonest or false representations for obtaining benefit), or

(ii) there has been a deliberate failure to report a relevant change of circumstances contrary to the requirement of regulation 84 and the overpayment occurred as a result of that deliberate failure; and

(e) the Executive is satisfied that the landlord—

(i) has not colluded with the claimant so as to cause the overpayment;

(ii) has not acted, or neglected to act, in such a way so as to contribute to the period, or the amount, of the overpayment.

(2) For the purposes of section 73(3)(b) of the Administration Act (recovery from such other person, as well as or instead of the person to whom the overpayment was made), where recovery of an overpayment is sought by the Executive—

(a) the prescribed person from whom it is sought shall be—

(i) in a case where an overpayment arose in consequence of a misrepresentation of or a failure to disclose a material fact (in either case, whether fraudulently or otherwise) by or on behalf of the claimant or any other person to whom housing benefit has been paid, the person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made;

(ii) in a case where an overpayment arose in consequence of an official error where the claimant or a person acting on his behalf or any other person to whom the payment has been made could reasonably have been expected, at the time of receipt of the payment or of any notice relating to that payment, to realise that it was an overpayment, that person instead of, if different, the person to whom the payment was made; or

(b) where sub-paragraph (a)(i) and (ii) do not apply, the prescribed person from whom it is sought is—

(i) the claimant;

(ii) in a case where a recoverable overpayment is made to a claimant who has one or more partners, the claimant's partner or any of his partners.

(3) For the purposes of paragraph (1), "landlord" shall have the same meaning as it has for the purposes of regulation 92.

(4) For the purposes of paragraph (2)(a)(ii), "overpayment arose in consequence of an official error" shall have the same meaning as in regulation 97(3).

(5) For the purposes of paragraph (2)(b)(ii), recovery of the overpayment may be by deduction from any housing benefit payable to a partner provided that the claimant and that partner were members of the same household both at the time of the overpayment and when the deduction is made.

(**145**) Section 105A was inserted by Article 12 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997 (S.I. 1997/1182 (N.I. 11)) and amended by paragraph 5 of Schedule 6 and Part V of Schedule 9 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and section 15(1) of the Social Security Fraud Act (Northern Ireland) 2001 (c. 17 (N.I.))

(**146**) Section 106(1) was amended by paragraph 3(2) of Schedule 1 to the Social Security Administration (Fraud) (Northern Ireland) Order 1997 and paragraph 6 of Schedule 6 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

Method of recovery

99.—(1) Without prejudice to any other method of recovery, a relevant authority may recover a recoverable overpayment from any person referred to in regulation 98 by deduction from any housing benefit to which that person is entitled (including arrears of entitlement after offsetting under regulation 95) or, where it is unable to do so, may request the Department to recover any recoverable overpayment from the benefits prescribed in regulation 102.

(2) Where—

(a) a claimant has moved into a dwelling which he occupies as his home;

(b) a recoverable overpayment of housing benefit is thereafter made direct to him in connection with the dwelling he occupied as his home immediately preceding the date he moved to that dwelling; and

(c) the relevant authority which made the recoverable overpayment is paying housing benefit to that claimant in respect of that new dwelling,

the relevant authority may at its discretion deduct from the housing benefit it is paying to the claimant in respect of a benefit week an amount equal to the claimant's weekly entitlement to housing benefit at his new dwelling, and may do so for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit.

(3) Subject to paragraphs (2), (5) and (6), where the Executive makes deductions permitted by paragraph (1) from the housing benefit in respect of rent it is paying to a claimant (other than deductions from arrears of entitlement), the deduction in respect of a benefit week shall be—

(a) in a case to which paragraph (4) applies, not more than the amount there specified; and

(b) in any other case, not more than 3 times 5 per cent. of the personal allowance for a single claimant aged not less than 25, that 5 per cent. being, where it is not a multiple of 5 pence, rounded to the next higher such multiple.

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

(a) been found guilty of an offence whether under a statute or otherwise;

(b) made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit; or

(c) agreed to pay a penalty under section 109A of the Administration Act(**147**) (penalty as alternative to prosecution) and the agreement has not been withdrawn,

the amount deducted under paragraph (3) shall be not more than 4 times 5 per cent. of the personal allowance for a single claimant aged not less than 25, but where that 5 per cent. is not a multiple of 10 pence, it shall be rounded to the nearest 10 pence or, if it is a multiple of 5 pence but not of 10 pence, the next higher multiple of 10 pence.

(5) Where, in the calculation of housing benefit in respect of rent, the amount of earnings or other income falling to be taken into account is reduced by reason of paragraphs 3 to 10 of Schedule 5 or paragraph 14, 15 or 16 of Schedule 6, the deduction under paragraph (3) may be increased by not more than half the amount of the reduction.

(6) No deduction made under this regulation, except as made under paragraph (2), shall be applied so as to reduce the housing benefit in respect of a benefit week to less than 50 pence.

(7) In this regulation—

(**147**) Section 109A was inserted by Article 14 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997 and amended by section 13 of the Social Security Fraud Act (Northern Ireland) 2001

"admission after caution" means an admission after a caution has been administered in accordance with a Code issued under the Police and Criminal Evidence (Northern Ireland) Order 1989(**148**);

"personal allowance for a single claimant aged not less than 25" means the amount specified in paragraph 1(1)(b) of column (2) of Schedule 4.

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

Diminution of capital

100.—(1) Where in the case of a recoverable overpayment, in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) as to a person's capital, or an error, other than one to which regulation 97(2) refers, as to the amount of a person's capital, the overpayment was in respect of a period ("the overpayment period") of more than 13 benefit weeks, the relevant authority shall, for the purpose only of calculating the amount of that overpayment—

(a) at the end of the first 13 benefit weeks of the overpayment period, treat the amount of that capital as having been reduced by the amount of housing benefit overpaid during those 13 weeks;

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

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

Sums to be deducted in calculating recoverable overpayments

101.—(1) Subject to paragraph (2), in calculating the amount of a recoverable overpayment, the relevant authority shall deduct any amount of housing benefit which should have been determined to be payable in respect of the whole or part of the overpayment period—

(a) on the basis of the claim as presented to the authority;

(b) on the basis of the claim as it would have appeared had any misrepresentation or non-disclosure been remedied before the decision; or

(c) on the basis of the claim as it would have appeared if any change of circumstances, except a change of the dwelling which the claimant occupies as his home, had been notified at the time that change occurred.

(2) In the case of rent or rate rebate only, in calculating the amount of a recoverable overpayment the relevant authority may deduct so much of any payment by way of rent or rates in respect of the overpayment period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous decision.

Recovery of overpayments from prescribed benefits

102.—(1) For the purposes of section 73(4) of the Administration Act (recovery of overpaid housing benefit by deduction from other benefits), the benefits prescribed by this regulation are—

(a) any benefit except guardian's allowance;

(b) income support;

(**148**)S.I. 1989/1341 (N.I. 12)

(c) any benefit payable under the legislation of any member State other than the United Kingdom concerning the branches of social security mentioned in Article 4(1) of Regulation (EEC) No. 1408/71(**149**) on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation;

(d) a jobseeker's allowance;

(e) state pension credit.

(2) For the purposes of paragraph (1)(c) the term "member State" shall be understood to include Switzerland in accordance with and subject to the provisions of Annex II of the Agreement between the European Community and its member States and the Swiss Confederation on the free movement of persons, signed at Brussels on 21st June 1999(**150**).

(3) Where the Department is satisfied that—

(a) a recoverable overpayment of housing benefit has been made, in consequence of a misrepresentation of or failure to disclose a material fact (in either case whether fraudulently or otherwise), by or on behalf of a claimant or any other person to whom a payment of housing benefit has been made; and

(b) the person who misrepresented that fact or failed to disclose it is receiving a sufficient amount of one or more of the benefits prescribed in paragraph (1) to enable deductions to be made for the recovery of the overpayment,

it shall, if requested to do so by an authority under regulation 99, recover the overpayment by deduction from any of those benefits.

(4) In paragraph (1)(a), "benefit" has the meaning it has in section 121(1) of the Act.

Prescribed benefits

103.—(1) The benefits prescribed for the purposes of section 73(5) and (7) of the Administration Act(**151**) (recovery of overpayments) are those set out in the following paragraphs.

(2) Prescribed benefits within section 73(5)(a) of the Administration Act (benefits to which a landlord or agent is entitled) are—

(a) housing benefit; and

(b) those benefits prescribed from time to time in regulation 102(1), but only in cases where—

(i) the Executive has, pursuant to regulation 99, requested the Department to recover an overpayment of housing benefit from such benefits, and

(ii) the Department is satisfied as to the matters prescribed in paragraph (3)(a) and (b) of regulation 102.

(3) Housing benefit is prescribed for the purposes of section 73(5)(b) or (c) of the Administration Act (benefits paid to a landlord or agent to discharge an obligation owed by another person).

(4) Prescribed benefits within section 73(7) of the Administration Act (benefits recoverable from the county court) are housing benefit and those benefits prescribed from time to time in regulation 102(1).

(**149**) O.J. No. L149, 5.7.71, p.2; Regulation No. 1408/71 was restated in amended form in Regulation No. 118/97 (O.J. No. L28, 30.1.97, p.1)

(**150**) Cm 4904

(**151**) Subsections (5) and (7) were added by Article 15 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997

Restrictions on recovery of rent and consequent modifications

104.—(1) Where, pursuant to section 73(5)(b) of the Administration Act, an amount has been recovered by deduction from housing benefit paid to a person (referred to as "the landlord" in this regulation) to discharge (in whole or in part) an obligation owed to him by the person on whose behalf the recoverable amount was paid (referred to as "the tenant" in this regulation) that obligation shall, in a case to which paragraph (2) applies, be taken to be discharged by the amount of the deduction.

(2) This paragraph applies in a case where the amount recoverable from the landlord relates to an overpayment of housing benefit in relation to which the landlord has—

(a) agreed to pay a penalty pursuant to section 109A of the Administration Act; or

(b) been convicted of an offence arising under the Act or any other statutory provision.

(3) In any case to which paragraph (2) applies or will apply when recovery is made the Executive shall notify both the landlord and the tenant that—

(a) the overpayment that it has recovered or that it has determined to recover ("that sum") is or will be one to which paragraph (2) applies; and

(b) the landlord has no right in relation to that sum against the tenant, and that his obligation to the landlord shall be taken to be discharged by the amount so recovered.

PART XIV

Information from landlords and agents

Interpretation

105. In this Part—

"the notice" means the notice prescribed in regulation 107(1)(b);

"relevant information" means such information as is prescribed in regulation 108;

"the requirer" means a person within regulation 106, who requires information pursuant to that regulation;

"the supplier" means an appropriate person who is required, pursuant to regulations 106 and 107, to supply relevant information and any person who is not so required is not, for the purpose of supplying information pursuant to section 119A of the Administration Act(**152**) and these Regulations, an appropriate person.

Requiring information

106. Pursuant to section 119A of the Administration Act, where a claim is made to the Executive, on which a rent allowance may be awarded, then, in the circumstances prescribed in regulation 107, the Executive, or any person authorised to exercise any function of the Executive relating to housing benefit, may require an appropriate person to supply to the Executive or person relevant information, in the manner prescribed in regulation 109.

Circumstances for requiring information

107.—(1) A person is required to supply information in the following circumstances—

(a) he is an appropriate person in relation to any dwelling in respect of which—

(**152**) Section 119A was inserted by Article 10 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997

(i) housing benefit is being paid to an appropriate person pursuant to regulation 92 or 93, or

(ii) a request has been made by an appropriate person or by the claimant for housing benefit to be so paid; and

(b) the requirer serves upon that appropriate person, whether by post or otherwise, a written notice stating that the requirer—

(i) suspects that there is or may be an impropriety in relation to a claim in respect of any dwelling wherever situate in relation to which he is an appropriate person, or

(ii) is already investigating an allegation of impropriety in relation to that person.

(2) Information required to be supplied under paragraph (1) shall be supplied to the requirer at the address specified in the notice.

Relevant information

108.—(1) The information the supplier is to supply to the requirer is that prescribed in paragraphs (2) and (3) (referred to in this Part as "the relevant information").

(2) For a supplier who falls within paragraph (4) or section 119A(2)(b) of the Administration Act ("the landlord"), the information is—

(a) where the landlord is an individual—

(i) his appropriate details;

(ii) the relevant particulars of any residential property in which he has an interest, and

(iii) the appropriate details of any body corporate, in which he is a major shareholder or of which he is a director and which has an interest in residential property;

(b) where the landlord is a trustee, except a trustee of a charity, in addition to any information that he is required to supply in accordance with sub-paragraph (a) or (c), as the case may be, the relevant particulars of any residential property held by the trust of which he is a trustee and the name and address of any beneficiary under the trust or the objects of that trust, as the case may be;

(c) where the landlord is a body corporate or otherwise not an individual, other than a charity—

(i) its appropriate details;

(ii) the relevant particulars of any residential property in which it has an interest;

(iii) the names and addresses of any directors of it;

(iv) the appropriate details of any person—

(aa) who owns 20 per cent. or more of it; or

(bb) of whom it owns 20 per cent. or more, and

(v) the names and addresses of its major shareholders;

(d) where the landlord is a charity the appropriate details relating to the landlord.

(3) For a supplier who falls within section 119A(2)(c) of the Administration Act or paragraph (5) ("the agent"), the information is—

(a) the name and address of any person ("his principal")—

(i) to whom the agent has agreed to make payments in consequence of being entitled to receive relevant payments, or

(ii) for whom the agent is acting on behalf of or in connection with any aspect of the management of a dwelling,

as the case may be;

(b) the relevant particulars of any residential property in respect of which the agent—

(i) has agreed to make payments in consequence of being entitled to receive relevant payments, or

(ii) is acting on behalf of his principal in connection with any aspect of its management;

(c) where the agent is an individual—

(i) the relevant particulars of any residential property in which he has an interest;

(ii) the appropriate details of any body corporate or any person otherwise not an individual, in which he is a major shareholder or of which he is a director and which has any interest in residential property; or

(d) where the agent is a body corporate or other than an individual—

(i) the relevant particulars of any residential property in which it has an interest;

(ii) the names and addresses of any directors of or major shareholders in the agent, and

(iii) the appropriate details of any person—

(aa) who owns 20 per cent. or more of the agent; or

(bb) of whom the agent owns 20 per cent. or more.

(4) A supplier falls within this paragraph (landlord receiving rent), if he falls within section 119A(2)(a) of the Administration Act, but does not fall within paragraph (5).

(5) A supplier falls within this paragraph (agent receiving the rent), if he falls within subsection (2)(a) of section 119A of the Administration Act and has agreed to make payments, in consequence of being entitled to receive relevant payments, to a person falling within subsection (2)(b) of that section.

(6) For the purposes of this regulation—

"appropriate details" means the name of the person and (in the case of a company) its registered office and, in any case, the full postal address, including post code, of the principal place of business of that person and the telephone and facsimile number (if any) of that place;

"charity" has the same meaning as in the Charities Act (Northern Ireland) 1964(**153**);

"major shareholder" means, where a body corporate is a company limited by shares, any person holding one tenth or more of the issued shares in that company and, in any other case, all the owners of that body;

"relevant particulars" means the full postal address, including post code, and number of current lettings of or within that residential property and, if that property includes 2 or more dwellings, that address and the number of such lettings for each such dwelling;

"residential property" includes any premises, situate within the United Kingdom—

(i) used or which has, within the last 6 months, been used, or

(ii) which may be used or is adapted for use,

as residential accommodation,

and other expressions used in this regulation and also in the Companies (Northern Ireland) Order 1986(**154**) shall have the same meaning in this regulation as they have in that Order.

(**153**) 1964 c. 33 (N.I.)
(**154**) S.I. 1986/1032 (N.I. 6)

Manner of supply of information

109.—(1) Subject to paragraph (2), the relevant information shall be supplied—

(a) in typewritten or printed form; or

(b) with the written agreement of the requirer, in electronic or handwritten form,

within a period of 4 weeks commencing on the date on which the notice was sent or given.

(2) Where—

(a) within a period of 4 weeks commencing on the date on which the notice was sent or given, the supplier requests that the time for the supply of the relevant information be extended; and

(b) the requirer provides written agreement to that request,

the time for the supply of the relevant information shall be extended to a period of 8 weeks commencing on the date on which the notice was sent or given.

Criminal offence

110. Any failure by the supplier to supply relevant information to the requirer as, when and how required under this Part shall be an offence under section 107 of the Administration Act(**155**) and there may be recovered from the supplier, on summary conviction for this offence, penalties not exceeding—

(a) for any one offence, level 3 on the standard scale; or

(b) for an offence of continuing any such failure after conviction, £40 for each day on which it is so continued.

Sealed with the Official Seal of the Department for Social Development on 12th October 2006

L.S.

John O'Neill
A senior officer of the Department for Social Development

(**155**) Section 107 was substituted by Article 56 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 N.I. 10)) and amended by paragraph 5 of Schedule 4 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), paragraph 7 of Schedule 6 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Schedule 2 to the National Insurance Contributions and Statutory Payments Act 2004 (c. 3)

The Department of Finance and Personnel hereby consents to the foregoing Regulations.
Sealed with the Official Seal of the Department of Finance and Personnel on 12th October 2006

L.S.

Fiona Hamill
A senior officer of the Department of Finance and Personnel

SCHEDULE 1 Regulation 13

Ineligible service charges

PART I

Service charges other than for fuel

Ineligible service charges

1. The following service charges shall not be eligible to be met by housing benefit—

(a) charges in respect of day-to-day living expenses including, in particular, all provision of—

(i) subject to paragraph 2 meals (including the preparation of meals or provision of unprepared food);

(ii) laundry (other than the provision of premises or equipment to enable a person to do his own laundry);

(iii) leisure items such as either sports facilities (except a children's play area), or television rental and licence fees (except radio relay charges, charges made in respect of the conveyance and the installation and maintenance of equipment for such conveyance of a television broadcasting service which is not a domestic satellite service, or charges made in respect of the conveyance and the installation and maintenance of equipment for such conveyance of a television programme service where in respect of the claimant's dwelling the installation of such equipment is the only practicable means of conveying satisfactorily a television broadcasting service which is not a domestic satellite service, as these services are defined in the Broadcasting Act 1990(**156**));

(iv) cleaning of rooms and windows except cleaning of—

(aa) communal areas; or

(bb) the exterior of any windows where neither the claimant nor any member of his household is able to clean them himself,

where a payment is not made in respect of such cleaning by the Executive to the claimant or his partner, or to another person on their behalf; and

(v) transport;

(b) charges in respect of—

(i) the acquisition of furniture or household equipment, and

(ii) the use of such furniture or equipment where that furniture or household equipment will become the property of the claimant by virtue of an agreement with the landlord;

(c) charges in respect of the provision of an emergency alarm system;

(d) charges in respect of medical expenses (including the cost of treatment or counselling related to mental disorder, mental handicap, physical disablement or past or present alcohol or drug dependence);

(e) charges in respect of the provision of nursing care or personal care (including assistance at meal-times or with personal appearance or hygiene);

(f) charges in respect of general counselling or of any other support services, whoever provides those services;

(**156**) 1990 c. 42

(g) charges in respect of any services not specified in sub-paragraphs (a) to (f) which are not connected with the provision of adequate accommodation.

Amount ineligible for meals

2.—(1) Where a charge for meals is ineligible to be met by housing benefit under paragraph 1, the amount ineligible in respect of each week shall be the amount specified in the following provisions of this paragraph.

(2) Subject to sub-paragraph (4), where the charge includes provision for at least 3 meals a day, the amount shall be—

(a) for a single claimant, £20.50;

(b) if the claimant is a member of a family—

(i) for the claimant and for each member of his family aged 16 or over, £20.50;

(ii) for each member of his family under age 16, £10.35.

(3) Except where sub-paragraph (5) applies and subject to sub-paragraph (4), where the charge includes provision for less than 3 meals a day, the amount shall be—

(a) for a single claimant, £13.65;

(b) if the claimant is a member of a family—

(i) for the claimant and for each member of his family aged 16 or over, £13.65;

(ii) for each member of his family under age 16, £6.85.

(4) For the purposes of sub-paragraphs (2)(b) and (3)(b), a person attains the age of 16 on the first Monday in September following his 16th birthday.

(5) Where the charge for meals includes the provision of breakfast only, the amount for the claimant and, if he is a member of a family, for the claimant and for each member of his family, shall be £2.50.

(6) Where a charge for meals includes provision for meals for a person who is not a member of the claimant's family sub-paragraphs (2) to (5) shall apply as if that person were a member of the claimant's family.

(7) For the avoidance of doubt where the charge does not include provision for meals for a claimant or, as the case may be, a member of his family, sub-paragraphs (2) to (5) shall not apply in respect of that person.

Amount of ineligible charges

3.—(1) Subject to paragraph 2 where an ineligible service charge is not separated from or separately identified within other payments made by the occupier in respect of the dwelling, the Executive shall apportion such charge as is fairly attributable to the provision of that service, having regard to the cost of comparable services and such portion of those payments shall be ineligible to be met by housing benefit.

(2) Subject to paragraph 2, where the Executive considers that the amount of any ineligible service charge which is separately identified within other payments made by the occupier in respect of the dwelling is unreasonably low having regard to the service provided, it shall substitute a sum for the charge in question which it considers represents the value of the services concerned and the amount so substituted shall be ineligible to be met by housing benefit.

(3) In sub-paragraph (2) "ineligible service charge" includes any service charge which does not qualify as a periodical payment under regulation 13(1)(e).

(4) In any other case, the whole amount of the ineligible service charge shall be ineligible to be met by housing benefit.

Excessive service costs

4. Subject to paragraph 2, where the Executive considers that the amount of a service charge to which regulation 13(1)(e) applies is excessive in relation to the service provided for the claimant or his family, having regard to the cost of comparable services, it shall make a deduction from that charge of the excess and the amount so deducted shall be ineligible to be met by housing benefit.

PART II

Payments in respect of fuel charges

5. A service charge for fuel except a charge in respect of services for communal areas shall be ineligible to be met by housing benefit.

6.—(1) Where a charge is ineligible to be met by housing benefit under paragraph 5—

(a) in the calculation of entitlement to a rent rebate; or

(b) in the calculation of entitlement to a rent allowance if the amount of the charge is specified or is otherwise readily identifiable (except where the amount of the charge is unrealistically low in relation to the fuel provided or the charge cannot readily be distinguished from a charge for a communal area),

the amount ineligible to be met by housing benefit shall be the full amount of the service charge.

(2) In any other case, subject to sub-paragraphs (3) and (4) and paragraph 7, the amount ineligible to be met by housing benefit shall be the following amounts in respect of each week—

(a) for heating (other than hot water), £11.95;

(b) for hot water, £1.40;

(c) for lighting, £0.95;

(d) for cooking, £1.40.

(3) Where the accommodation occupied by the claimant or, if he is a member of a family, by the claimant and the members of his family, consists of one room only, the amount ineligible to be met by housing benefit in respect of each week where heating only is, or heating and either hot water or lighting (or both) are, provided, shall be one half of the aggregate of the amounts specified in sub-paragraph (2)(a), (b) and (c).

(4) In a case to which sub-paragraph (2) or (3) applies, if a claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, the amount ineligible to be met by housing benefit under this paragraph shall be that estimated amount.

7.—(1) Where rent is payable other than weekly, any amount ineligible to be met by housing benefit which is specified in this Schedule as a weekly amount shall—

(a) where rent is payable in multiples of a week, be multiplied by the number equal to the number of weeks in respect of which it is payable; or

(b) in any other case, be divided by 7 and multiplied by the number of days in the period to be used by the Executive for the purpose of calculating the claimant's weekly eligible rent under regulation 78.

(2) In a case to which regulation 79 applies, any amount ineligible to be met by housing benefit which is specified in this Schedule as a weekly amount shall, where appropriate, be converted in accordance with sub-paragraph (1) and shall—

(a) where rent is payable weekly, or in multiples of a week, be multiplied by 52 or 53, whichever is appropriate, and divided by the number equal to the number of weeks in that 52 or 53 week period in respect of which he is liable to pay rent; or

(b) in any other case, be multiplied by 365 or 366, whichever is appropriate, and divided by the number of days in that 365 or 366 day period in respect of which he is liable to pay rent.

8. In this Schedule—

"communal areas" means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation;

"fuel" includes gas and electricity and a reference to a charge for fuel includes a charge for fuel which includes an amount in respect of the facility of providing it other than a specified amount for the provision of a heating system.

SCHEDULE 2 Regulation 15

Decisions of rent payable

PART I

Decisions

Significantly high rents

1.—(1) The Executive shall decide whether, in its opinion, the rent payable under the tenancy of the dwelling at the relevant time is significantly higher than the rent which the landlord might reasonably have been expected to obtain under the tenancy at that time.

(2) If the Executive decides under sub-paragraph (1) that the rent is significantly higher, the Executive shall also decide the rent which the landlord might reasonably have been expected to obtain under the tenancy at the relevant time.

(3) When making a decision under this paragraph, the Executive shall have regard to the level of rent under similar tenancies of similar dwellings in the locality (or as similar as regards tenancy, dwelling and locality as is reasonably practicable) and shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy.

Size and rent

2.—(1) The Executive shall decide whether the dwelling, at the relevant time, exceeds the size criteria for the occupiers.

(2) If the Executive decides that the dwelling exceeds the size criteria, the Executive shall also decide the rent which a landlord might reasonably have been expected to obtain, at the relevant time, for a tenancy which is—

(a) similar to the tenancy of the dwelling;

(b) on the same terms other than the term relating to the amount of rent; and

(c) of a dwelling which is in the same locality as the dwelling, but which—

(i) accords with the size criteria for the occupiers;

(ii) is in a reasonable state of repair, and

(iii) corresponds in other respects, in the Executive's opinion, as closely as is reasonably practicable to the dwelling.

(3) When making a decision under sub-paragraph (2), the Executive shall have regard to the same matter and make the same assumption as specified in paragraph 1(3), except that in judging the similarity of other tenancies and dwellings the comparison shall be with the tenancy of the second dwelling referred to in sub-paragraph (2) and shall assume that no one who would have been entitled to housing benefit had sought or is seeking that tenancy.

Exceptionally high rents

3.—(1) The Executive shall decide whether, in its opinion, the rent payable for the tenancy of the dwelling at the relevant time is exceptionally high.

(2) In sub-paragraph (1) "rent payable for the tenancy" means—

(a) where a decision is made under sub-paragraph (2) of paragraph 2, the rent decided under that sub-paragraph;

(b) where no decision is so made and a decision is made under sub-paragraph (2) of paragraph 1, the rent decided under that sub-paragraph; and

(c) in any other case, the rent payable under the tenancy at the relevant time.

(3) If the Executive decides under sub-paragraph (1) that the rent is exceptionally high, the Executive shall also decide the highest rent, which is not an exceptionally high rent and which a landlord might reasonably have been expected to obtain at the relevant time (on the assumption that no one who would have been entitled to housing benefit had sought or is seeking the tenancy) for an uncontrolled tenancy of a dwelling which—

(a) is in the same locality as the dwelling;

(b) has the same number of bedrooms and rooms suitable for living in as the dwelling (or, where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria); and

(c) is in a reasonable state of repair.

(4) For the purpose of deciding whether a rent is an exceptionally high rent under this paragraph, the Executive shall have regard to the levels of rent under uncontrolled tenancies of dwellings which—

(a) are in the same locality as the dwelling (or in as similar a locality as is reasonably practicable); and

(b) have the same number of bedrooms and rooms suitable for living in as the dwelling (or, in a case where the dwelling exceeds the size criteria for the occupiers, accord with the size criteria).

Local reference rents

4.—(1) The Executive shall make a decision of a local reference rent in accordance with the formula—

$$R = \frac{H + L}{2}$$

where—

R is the local reference rent;

H is the highest rent, in the Executive's opinion—

(a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an uncontrolled tenancy of a dwelling which meets the criteria in sub-paragraph (2); and

(b) which is not an exceptionally high rent; and

L is the lowest rent, in the Executive's opinion—

(a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an uncontrolled tenancy of a dwelling which meets the criteria in sub-paragraph (2); and

(b) which is not an exceptionally low rent.

(2) The criteria are—

(a) that the dwelling under the uncontrolled tenancy—

(i) is in the same locality as the dwelling;

(ii) is in a reasonable state of repair, and

(iii) has the same number of bedrooms and rooms suitable for living in as the dwelling (or, in a case where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria); and

(b) if the tenant does not have the use under the tenancy of the dwelling at the relevant time of more than one bedroom or room suitable for living in—

(i) that under the uncontrolled tenancy the tenant does not have the use of more than one bedroom or room suitable for living in;

(ii) if the rent under the tenancy at the relevant time includes payments for board and attendance and the Executive considers the amount fairly attributable to board and attendance is a substantial part of the rent, that a substantial part of the rent under the uncontrolled tenancy is fairly attributable to board and attendance;

(iii) if sub-head (ii) does not apply and the tenant shares a kitchen, toilet, bathroom and room suitable for living in with a person other than a member of his household, a non-dependant or a person who pays rent to the tenant, that the uncontrolled tenancy provides for the tenant to share a kitchen, toilet, bathroom and room suitable for living in, and

(iv) if sub-heads (ii) and (iii) do not apply, that the circumstances described in sub-heads (ii) and (iii) do not apply in relation to the uncontrolled tenancy.

(3) When ascertaining H and L under sub-paragraph (1), the Executive—

(a) shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and

(b) shall exclude the amount of any rent which, in the Executive's opinion, is fairly attributable to the provision of services which are ineligible to be met by housing benefit.

(4) In sub-paragraph (2), "bedroom or room suitable for living in" does not include a room which the tenant shares with any person other than—

(a) a member of his household;

(b) a non-dependant; or

(c) a person who pays rent to the tenant.

(5) In sub-paragraph (3), "services" means services performed or facilities (including the use of furniture) provided for, or rights made available to, the tenant, but not, in the case of a tenancy where a substantial part of the rent under the tenancy is fairly attributable to board and attendance, the provision of meals (including the preparation of meals or provision of unprepared food).

Single room rents

5.—(1) The Executive shall decide a single room rent in accordance with the following formula—

$$S = \frac{H + L}{2}$$

where—

S is the single room rent;

H is the highest rent, in the Executive's opinion—

(a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an uncontrolled tenancy of a dwelling which meets the criteria in sub-paragraph (2); and

(b) which is not an exceptionally high rent; and

L is the lowest rent, in the Executive's opinion—

(a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an uncontrolled tenancy of a dwelling which meets the criteria in sub-paragraph (2); and

(b) which is not an exceptionally low rent.

(2) The criteria are—

(a) that the dwelling under the uncontrolled tenancy is in the same locality as the dwelling and is in a reasonable state of repair;

(b) that, under the uncontrolled tenancy, the tenant—

(i) has the exclusive use of one bedroom;

(ii) does not have the use of any other bedroom;

(iii) shares the use of a room suitable for living in;

(iv) shares the use of a toilet and bathroom, and

(v) shares the use of a kitchen and does not have the exclusive use of facilities for cooking food; and

(c) that the rent does not include any payment for board and attendance.

(3) Sub-paragraphs (3) and (5) of paragraph 4 apply when ascertaining H and L under this paragraph as if the reference in those sub-paragraphs to H and L were to H and L under this paragraph.

Claim-related rent

6.—(1) In this paragraph, "claim-related rent" means—

(a) where the Executive makes a decision under sub-paragraph (2) of paragraph 1, sub-paragraph (2) of paragraph 2 and sub-paragraph (3) of paragraph 3, the lowest of the 3 rents decided under those sub-paragraphs;

(b) where the Executive makes a decision under only 2 of the sub-paragraphs referred to in head (a), the lower of the 2 rents decided under those sub-paragraphs;

(c) where the Executive makes a decision under only one of the sub-paragraphs referred to in head (a), the rent decided under that sub-paragraph;

(d) where the Executive does not make a decision under any of the sub-paragraphs referred to in head (a), the rent payable under the tenancy of the dwelling at the relevant time.

(2) Where the Executive makes any decision under paragraphs 1, 2 or 3, it shall also decide which rent is the claim-related rent.

(3) Where the dwelling is not in a hostel, the Executive shall also decide the total amount of ineligible charges, as defined in paragraph 7, which it has not included in the claim-related rent because of the assumptions made in accordance with that paragraph.

PART II

Assumptions etc.

Ineligible charges and support charges

7.—(1) For the purposes of this paragraph, "ineligible charges" means service charges which are ineligible to be met by housing benefit by virtue of regulation 13(3) and Schedule 1 except, in the case of a tenancy where the rent includes payments for board and attendance, and the Executive considers that a substantial part of the rent under the tenancy is fairly attributable to board and attendance, charges specified in paragraph 1(a)(i) of Schedule 1.

(2) When making a decision under paragraph 1, 2 or 3 of this Schedule, the Executive shall assume that the items to which the ineligible charges relate were not to be provided or made available.

Housing associations etc.

8.—(1) Where the landlord is a housing association or a charity, the Executive shall assume that the landlord is not such a body.

(2) The Executive shall not take into account the rent under any tenancy where the landlord is a housing association or where the landlord is a charity and the dwelling is provided by the landlord in the pursuit of its charitable purposes.

(3) In this paragraph "charity" has the same meaning as in the Charities Act (Northern Ireland) 1964.

PART III

Indicative rent levels

9.—(1) The Executive shall decide the indicative rent level for each category described in sub-paragraph (3) in accordance with the following formula—

$$I = \frac{(H + N)}{4}$$

where—

I is the indicative rent level;

H is the highest rent, in the Executive's opinion—

(a) which a landlord might reasonably be expected to obtain at the time the decision is being made for an uncontrolled tenancy of a dwelling meeting the criteria in sub-paragraph (2); and

(b) which is not an exceptionally high rent; and

L is the lowest rent, in the Executive's opinion—

(a) which a landlord might reasonably be expected to obtain at the time the decision is being made for an uncontrolled tenancy of a dwelling meeting the criteria in sub-paragraph (2); and

(b) which is not an exceptionally low rent.

(2) The criteria are that—

(a) the dwelling is in a reasonable state of repair; and

(b) the dwelling and tenancy accord with the category to which the decision relates.

(3) The categories for the purposes of this paragraph are—

(a) a dwelling where the tenant does not have use of more than one room and where a substantial part of the rent under the tenancy is fairly attributable to board and attendance;

(b) a dwelling where the tenant does not have use of more than one room, the tenancy provides for him to share a kitchen or toilet and head (a) does not apply;

(c) a dwelling where the tenant does not have use of more than one room and where heads (a) and (b) do not apply;

(d) a dwelling where the tenant does not have use of more than 2 rooms and where none of heads (a) to (c) applies;

(e) a dwelling where the tenant does not have use of more than 3 rooms and where none of heads (a) to (d) applies;

(f) a dwelling where the tenant does not have use of more than 4 rooms and where none of heads (a) to (e) applies;

(g) a dwelling where the tenant does not have use of more than 5 rooms and where none of heads (a) to (f) applies; and

(h) a dwelling where the tenant does not have use of more than 6 rooms and where none of heads (a) to (g) applies.

(4) When ascertaining H and L under sub-paragraph (1), the Executive—

(a) shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and

(b) shall exclude the amount of any rent which, in the Executive's opinion, is fairly attributable to the provision of services which are ineligible to be met by housing benefit.

(5) In this paragraph—

"room" means a bedroom or room suitable for living in and in heads (a), (b) and (c) of sub-paragraph (3) does not include a room which the tenant shares with any person other than—

(a) a member of his household;

(b) a non-dependant of the tenant; or

(c) a person who pays rent to the tenant;

"services" has the meaning given in paragraph 4(5).

PART IV

Size criteria

10. One bedroom or room suitable for living in shall be allowed for each of the following categories of occupier (and each occupier shall come within only the first category for which he is eligible)—

(a) a couple;

(b) a person who is not a child;

(c) 2 children of the same sex;

(d) 2 children who are less than 10 years old;

(e) a child.

11. The number of rooms (excluding any allowed under paragraph 10) suitable for living in allowed are—

(a) if there are less than 4 occupiers, one;

(b) if there are more than 3 and less than 7 occupiers, 2; and

(c) in any other case, 3.

PART V

Special cases

Houseboats

12. Where a decision relates in whole or in part to mooring charges for a houseboat, this Schedule applies in relation to that decision (or, as the case may be, to that part which relates to those charges) with the following modifications—

(a) references to a tenancy, a tenancy of a dwelling or an uncontrolled tenancy are references to an agreement under which those charges are payable (and references to a landlord and a tenant shall be construed accordingly); and

(b) no decision shall be made under paragraph 2 and references to the dwelling exceeding the size criteria shall not apply.

Mobile homes

13. Where a decision relates in whole or in part to payments in respect of the site on which a caravan or a mobile home stands, this Schedule applies in relation to that decision (or, as the case may be, that part which relates to those payments) with the following modifications—

(a) references to a tenancy, a tenancy of a dwelling or an uncontrolled tenancy are references to an agreement under which those payments are payable (and references to a landlord and a tenant shall be construed accordingly); and

(b) no decision shall be made under paragraph 2 and references to the dwelling exceeding the size criteria shall not apply.

Rental purchase agreements

14. Where a decision relates to a rental purchase agreement, the agreement is to be treated as if it were a tenancy.

PART VI

Interpretation

15. In this Schedule—

"uncontrolled tenancy" means a tenancy which is not a protected or statutory tenancy within the meaning of the Rent (Northern Ireland) Order 1978(**157**) or a secure tenancy within the meaning of Article 25 of the Housing (Northern Ireland) Order 1983(**158**);

"decision" means a decision made in accordance with Part I or Part III;

"dwelling" means any residential accommodation whether or not consisting of the whole or part of a building and whether or not comprising separate and self-contained premises;

(**157**)S.I. 1978/1050 (N.I. 20)
(**158**)S.I. 1983/1118 (N.I. 15)

"occupier" means a person (whether or not identified by name) who is stated to occupy the dwelling as his home;

"relevant time" means the time the application for the decision is made or, if earlier, the tenancy ends;

"size criteria" means the standards relating to bedrooms and rooms suitable for living in specified in this Schedule;

"tenancy" includes—

(a) a licence; and

(b) a prospective tenancy or licence, and

references to a tenant, a landlord or any other expression appropriate to a tenancy shall be construed accordingly.

SCHEDULE 3

Regulations 15(3)(b) and 16(2)(b)

Excluded tenancies

1. An excluded tenancy is any tenancy to which any of the following paragraphs apply.

2.—(1) Subject to the following sub-paragraphs, where the Executive has made a decision, which relates to the tenancy in question or any other tenancy of the same dwelling this paragraph applies to—

(a) the tenancy in respect of which that decision was made; and

(b) any other tenancy of the same dwelling on terms which are substantially the same, other than the term relating to the amount of rent, as those terms were at the time of that decision or, if earlier, at the end of the tenancy.

(2) For the purposes of any claim, notification or request ("the later application"), a tenancy shall not be an excluded tenancy by virtue of sub-paragraph (1) by reference to the Executive's decision made in consequence of an earlier claim, notification or request ("the earlier application") where—

(a) the earlier and later applications were made in respect of the same claimant or different claimants; and

(b) the earlier application was made more than 52 weeks before the later application was made.

(3) Sub-paragraph (1) shall not apply where subsequent to the making of the decision mentioned in that sub-paragraph—

(a) the number of occupiers of the dwelling has changed and that dwelling is not in a hostel;

(b) there has been a substantial change in the condition of the dwelling (including the making of improvements) or the terms of the tenancy other than a term relating to rent;

(c) there has been a rent increase under a term of the tenancy and the term under which that increase was made was either included in the tenancy at the time when the application for that decision was made (or was a term substantially the same as such a term) and that decision was not made under paragraph 1(2), 2(2) or 3(3) of Schedule 2;

(d) in a case where the Executive has made a decision under paragraph 2(2) of Schedule 2, but since the date of the application for that decision—

(i) a child, who is a member of the household occupying the dwelling, has attained the age of 10 years;

(ii) a young person, who is a member of the household occupying that dwelling, has attained the age of 16 years, or

(iii) there is a change in the composition of the household occupying the dwelling;

(e) the claimant is a young individual, except in a case where the decision mentioned in sub-paragraph (1) was, or was made in connection with, a decision of a single room rent pursuant to paragraph 5 of Schedule 2 on or after 2nd July 2001.

3. This paragraph applies where the landlord is a registered housing association, except in a case where the Executive consider that—

(a) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependants of his and any person paying rent to him); or

(b) the rent payable for that dwelling is unreasonably high.

4. This paragraph applies to a tenancy which is a protected or statutory tenancy within the meaning of the Rent (Northern Ireland) Order 1978(**159**).

5.—(1) Subject to sub-paragraphs (2) and (3) this paragraph applies to a tenancy in respect of a dwelling comprised in land which has been disposed of under Article 88 of the Housing (Northern Ireland) Order 1981(**160**).

(2) This paragraph shall not apply to a tenancy to which sub-paragraph (1) refers if—

(a) there has been an increase in rent since the disposal occurred; and

(b) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependant of his and any person paying rent to him); or

(c) the rent payable for that dwelling is unreasonably high.

(3) Where the disposal took place on or after 7th October 2002, sub-paragraph (2) shall apply to a tenancy to which sub-paragraph (1) refers as if head (b) were omitted.

6. In this Schedule expressions have the same meaning as in regulation 16(5) and, in the case of a decision under regulation 16(1), any reference to a "tenancy" shall be taken as a reference to a prospective tenancy and any reference to an "occupier" or any person "occupying" a dwelling shall, in the case of such a decision, be taken to be a reference to a potential occupier or potential occupation of that dwelling.

SCHEDULE 4

Regulations 20 and 21

Applicable amounts

PART I

Personal allowances

1. The amounts specified in column (2) in respect of each person or couple specified in column (1) shall be the amounts specified for the purposes of regulations 20(a) and 21(a) and (b)—

(**159**)S.I. 1978/1050 (N.I. 20)
(**160**)S.I. 1981/156 (N.I. 3)

Column (1) *Person or couple*	*Column (2)* *Amount*
(1) Single claimant aged—	(1)
(a) (a) less than 25;	(a) (a) £45.50;
(b) (b) not less than 25.	(b) (b) £57.45.
(2) Lone parent aged—	(2)
(a) (a) less than 18;	(a) (a) £45.50;
(b) (b) not less than 18.	(b) (b) £57.45.
(3) Couple—	(3)
(a) (a) where both members are aged less than 18;	(a) (a) £68.65;
(b) (b) where at least one member is aged not less than 18.	(b) (b) £90.10.

2.—(1) The amount specified in column (2) 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 20(b) and 21(c)—

Column (1) *Child or young person*	*Column (2)* *Amount*
Persons 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) £45.58;
(b) (b) beginning on the first Monday in September following that person's sixteenth birthday and ending on the day preceding that person's twentieth birthday.	(b) (b) £45.58.

(2) In column (1) of the Table in paragraph (1), "the first Monday in September" means the Monday which first occurs in the month of September in any year.

PART II

Family premium

3.—(1) Subject to sub-paragraph (2), the amount for the purposes of regulations 20(c) and 21(d) in respect of a family of which at least one member is a child or young person shall be—

(a) where the claimant is a lone parent to whom sub-paragraph (3) applies, £22.20;

(b) in any other case, £16.25.

(2) The amounts specified in sub-paragraph (1)(a) and (b) shall be increased by £10.50 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 under the age of one year until the first Monday after his first birthday.

(3) The amount in sub-paragraph (1)(a) shall be applicable to a lone parent—

(a) who was entitled to housing benefit on 5th April 1998 and whose applicable amount on that date included the amount applicable under sub-paragraph (1)(a) as in operation on that date; or

(b) who was not entitled to housing benefit on 5th April 1998 because that date fell during a rent-free period as defined in regulation 79(1) and his applicable amount on that date would have included the amount applicable under sub-paragraph (1)(a) as in operation on that date,

and in respect of whom all of the conditions specified in sub-paragraph (4) have continued to apply.

(4) The conditions specified for the purposes of sub-paragraph (3) are that, in respect of the period commencing on 6th April 1998—

(a) the claimant has not ceased to be entitled, or has not ceased to be treated as entitled, to housing benefit;

(b) the claimant has not ceased to be a lone parent;

(c) where the claimant was entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, he has continued to be entitled to one or other of those benefits;

(d) where the claimant was not entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, he has not become entitled to either of those benefits; and

(e) a premium under paragraph 9, 10, 11 or 12 has not become applicable to the claimant.

(5) For the purposes of sub-paragraph (4)(a), a claimant shall be treated as entitled to housing benefit during any rent-free period as defined for the purposes of regulation 79(1).

PART III

Premiums

4. Except as provided in paragraph 5, the premiums specified in Part IV shall, for the purposes of regulations 20(d) and 21(e), be applicable to a claimant who satisfies the condition specified in paragraphs 8 to 17 in respect of that premium.

5. Subject to paragraph 6, where a claimant satisfies the conditions in respect of more than one premium in this Part, 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 14 applies;

(b) an enhanced disability premium to which paragraph 15 applies;

(c) a disabled child premium to which paragraph 16 applies; and

(d) a carer premium to which paragraph 17 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 under paragraph 9 or 10; or

(b) a higher pensioner premium under paragraph 11.

7.—(1) Subject to sub-paragraph (2), for the purposes of this Part, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit for—

(a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(**161**) applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and

(b) any period spent by a person in undertaking a course of training or instruction provided or arranged by the Department for Employment and Learning under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(**162**), or section 1 (1) of the 1950 Act(**163**) or for any period during which he is in receipt of a training allowance.

(2) For the purposes of the carer premium under paragraph 17, a person shall be treated as being in receipt of carer's allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act.

Bereavement premium

8.—(1) Subject to sub-paragraphs (2) and (3), the condition is that the claimant—

(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 of the Act(**164**) in respect of the death of a spouse who died on or after 9th April 2001 or of a civil partner who died on or after 5th December 2005; and

(c) is claiming housing benefit as a single claimant.

(2) A premium under sub-paragraph (1) shall not be applicable in respect of a claimant who claims housing benefit more than 8 weeks after the last day on which he was entitled to a bereavement allowance.

(3) Where a claimant to whom a premium under sub-paragraph (1) is applicable, ceases to be entitled to housing benefit or to be a single claimant, a premium under sub-paragraph (1) shall only again be applicable to that claimant where he claims housing benefit as a single claimant no more than 8 weeks after the date on which he ceased to be entitled to housing benefit or, as the case may be, to be a single claimant.

Pensioner premium for persons under 75

9. The condition is that the claimant—

(a) is a single claimant 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

10. The condition is that the claimant—

(**161**) S.R. 1979 No. 242

(**162**) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

(**163**) Section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(**164**) Section 39B was inserted by Article 52(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(a) is a single claimant 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

11.—(1) Where the claimant is a single claimant or a lone parent, the condition for the higher pensioner premium is that—

(a) he is aged not less than 80; or

(b) he is aged less than 80 but not less than 60; and—

(i) the additional condition specified in paragraph 13(1)(a) is satisfied, or

(ii) the claimant was in receipt of housing benefit and the disability premium was applicable to him in respect of a benefit week within 8 weeks of his 60th birthday and he has, subject to sub-paragraph (3), remained continuously in receipt of housing benefit since attaining that age.

(2) Where the claimant 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 either—

(i) the additional condition specified in paragraph 13(1)(a) is satisfied, or

(ii) the claimant was in receipt of housing benefit and the disability premium was applicable to him in respect of a benefit week within 8 weeks of his 60th birthday and he has, subject to sub-paragraph (3), remained continuously in receipt of housing benefit since attaining that age.

(3) For the purposes of this paragraph and paragraph 13—

(a) once the higher pensioner premium is applicable to a claimant, if he then ceases, for a period of 8 weeks or less, to be entitled to housing benefit, he shall, on becoming re-entitled to housing benefit, thereafter be treated as having been continuously entitled to that benefit;

(b) where sub-paragraphs (1)(b)(ii) and (2)(b)(ii) apply, if a claimant ceases to be entitled to housing benefit for a period not exceeding 8 weeks which includes his 60th birthday, he shall, on becoming re-entitled to housing benefit, thereafter be treated as having been continuously entitled to that benefit.

(4) In the case of a claimant who is a welfare to work beneficiary, references in sub-paragraphs (1)(b)(ii), (2)(b)(ii) and (3)(b) to a period of 8 weeks shall be treated as references to a period of 104 weeks.

(5) A person is a welfare to work beneficiary if he is a person—

(a) to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(**165**) applies; and

(b) who again becomes incapable of work for the purposes of Part XIIA of the Act(**166**).

Disability premium

12. The condition for the disability premium is that—

(**165**) S.R. 1995 No. 41; regulation 13A was inserted by regulation 4(2) of S.R. 1998 No. 324 and amended by regulation 2(2) of, and the Schedule to, S.R. 2006 No. 150

(**166**) 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))

(a) where the claimant is a single claimant or a lone parent, he is aged less than 60 and the additional condition specified in paragraph 13 is satisfied; or

(b) where the claimant has a partner, either—

(i) the claimant is aged less than 60 and the additional condition specified in paragraph 13(1)(a) or (b) is satisfied by him, or

(ii) his partner is aged less than 60 and the additional condition specified in paragraph 13(1)(a) is satisfied by his partner.

Additional condition for the higher pensioner and disability premiums

13.—(1) Subject to sub-paragraph (2) and paragraph 7, the additional condition referred to in paragraphs 11 and 12 is that either—

(a) the claimant 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 Regulations, mobility supplement, long-term incapacity benefit under Part II of the Act or severe disablement allowance under Part III of the Act but, in the case of long-term incapacity benefit or severe disablement allowance only where it is paid in respect of him;

(ii) was in receipt of long-term incapacity benefit under Part II of the Act when entitlement to that benefit ceased on account of the payment of a retirement pension under that Act and the claimant has since remained continuously entitled to housing benefit and, if the long-term incapacity benefit was payable to his partner, the partner is still a member of the family;

(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 Act or otherwise abated as a consequence of the claimant or his partner becoming a patient within the meaning of regulation 25(11)(e);

(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 Order or receives payments by way of grant from that Department under Article 30(3) of that Order, or

(v) has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a Health and Social Services Board; or

(b) the claimant—

(i) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part XIIA of the Act, 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 claimant who is terminally ill within the meaning of section 30B(4) of the Act(**167**), 196 days;

(bb) in any other case, 364 days.

(2) For the purposes of sub-paragraph (1)(a)(v), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional

(**167**) Section 30B was inserted by Article 4(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

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 claimant 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 of 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 purpose of sub-paragraph (1)(a)(ii) and (iii), once the higher pensioner premium is applicable to the claimant by virtue of his satisfying the condition specified in that provision, if he then ceases, for a period of 8 weeks or less, to be entitled to housing benefit, he shall on again becoming so entitled to housing benefit, immediately thereafter be treated as satisfying the condition in sub-paragraph (1)(a)(ii) and (iii).

(5) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to a claimant 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 or arranged under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945 or section 3 of the 1950 Act(**168**) or for any period during which he is in receipt of a training allowance.

(6) For the purposes of sub-paragraph (1)(b), where any 2 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.

(7) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the 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.

(8) In the case of a claimant who is a welfare to work beneficiary within the meaning of paragraph 11(5)—

(a) in sub-paragraph (3) the reference to a period of 8 weeks; and

(b) in sub-paragraph (6) the reference to a period of 56 days,

shall in each case be treated as a reference to a period of 104 weeks.

Severe disability premium

14.—(1) The condition is that the claimant is a severely disabled person.

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

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

(i) he is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act;

(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

(**168**) Section 3 was amended by Part I of Schedule 4 to the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)) and paragraph 1 of Schedule 3 to the Industrial Training (Northern Ireland) Order 1984 (S.I. 1984/1159 (N.I. 9))

(iii) no person is entitled to, and in receipt of, a carer's allowance under section 70 of the Act(**169**) in respect of caring for him;

(b) in the case of a claimant who has a partner—

(i) the claimant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act;

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

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

and either a person is entitled to or in receipt of a carer's allowance 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 as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any partner of a polygamous marriage.

(3) Where a claimant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of paragraph 13(1)(a)(v) and (2), that partner shall be treated for the purposes of sub-paragraph (2) as if he were not a partner of the claimant.

(4) For the purposes of sub-paragraph (2)(a)(ii) and (b)(iii) no account shall be taken of—

(a) a person receiving attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act;

(b) a person who is blind or is treated as blind within the meaning of paragraph 13(1)(a)(v) and (2).

(5) For the purposes of sub-paragraph (2)(b) a person shall be treated—

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

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

(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 backdated for a period before the date on which the award is made.

(7) In sub-paragraph (2)(a)(iii) and (b), references to a person being in receipt of a carer's allowance shall include references to a person who would have been in receipt of that allowance but for the application of a restriction under section 6 of the Fraud Act (loss of benefit provisions).

Enhanced disability premium

15.—(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 113(2) of the Act or but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of the Act in respect of—

(**169**) Section 70 was amended by regulation 2(3) of S.R. 1994 No. 370 and Article 3 of S.R. 2002 No. 321

(a) the claimant; or

(b) a member of the claimant's family,

who is aged less than 60.

(2) An enhanced disability premium shall not be applicable in respect of—

(a) a claimant who—

(i) is not a member of a couple or a polygamous marriage, and

(ii) is a patient within the meaning of regulation 25(11)(e) and has been for a period of more than 52 weeks; or

(b) a member of a couple or a polygamous marriage where each member is a patient within the meaning of regulation 25(11)(e) and has been for a period of more than 52 weeks.

Disabled child premium

16. The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

(a) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family;

(b) is blind or treated as blind within the meaning of paragraph 13; or

(c) is a child or young person in respect of whom section 141A of the Act(**170**) (entitlement after death of child) applies for the purposes of entitlement to child benefit but only for the period prescribed under section 141A(1) of the Act and in respect of whom a disabled child premium was included in the claimant's applicable amount immediately before the death of that child.

Carer premium

17.—(1) The condition is that the claimant or his partner is, or both of them are, entitled to a carer's allowance under section 70 of the Act.

(2) Where a carer premium is awarded but—

(a) the person in respect of whose care the carer's allowance has been awarded dies; or

(b) in any other case the person in respect of whom a carer premium has been awarded ceases to be entitled to a carer's allowance,

the condition for the award of the premium shall be treated as satisfied for a period of 8 weeks from the relevant date specified in sub-paragraph (3).

(3) The relevant date for the purposes of sub-paragraph (2) shall be—

(a) where sub-paragraph (2)(a) applies, the Sunday following the death of the person in respect of whose care a carer's allowance has been awarded or the date of death if the death occurred on a Sunday;

(b) in any other case, the date on which the person who has been entitled to a carer's allowance ceases to be entitled to that allowance.

(4) Where a person who has been entitled to a carer's allowance ceases to be entitled to that allowance and makes a claim for housing benefit, the condition for the award of the carer premium shall be treated as satisfied for a period of 8 weeks from the date on which—

(**170**) Section 141A was inserted by section 55 of the Tax Credits Act 2002 (c. 21) and amended by paragraph 101 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and paragraph 38 of Schedule 1 to the Child Benefit Act 2005 (c. 6)

(a) the person in respect of whose care the carer's allowance has been awarded dies;

(b) in any other case, the person who has been entitled to a carer's allowance ceased to be entitled to that allowance.

Persons in receipt of concessionary payments

18. For the purpose of determining whether a premium is applicable to a person under paragraphs 13 to 17, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

Person in receipt of benefit

19. 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

Premium	*Amount*
20.—(1) Bereavement premium.	(1) £26.80.
(2) Pensioner premium for persons aged under 75—	(2)
(a) (a) where the claimant satisfied the condition in paragraph 9(a);	(a) (a) £56.60;
(b) (b) where the claimant satisfies the condition in paragraph 9(b).	(b) (b) £83.95.
(3) Pensioner premium for persons aged 75 and over—	(3)
(a) (a) where the claimant satisfied the condition in paragraph 10(a);	(a) (a) £56.60;
(b) (b) where the claimant satisfies the condition in paragraph 10(b).	(b) (b) £83.95.
(4) Higher pensioner premium—	(4)
(a) (a) where the claimant satisfies the condition in paragraph 11(1)(a) or (b);	(a) (a) £56.60;
(b) (b) where the claimant satisfies the condition in paragraph 11(2)(a) or (b).	(b) (b) £83.95.
(5) Disability premium—	(5)
(a) (a) where the claimant satisfies the condition in paragraph 12(a);	(a) (a) £24.50;
(b) (b) where the claimant satisfies the condition in paragraph 12(b).	(b) (b) £34.95.
(6) Severe disability premium—	(6)

Premium	*Amount*
(a) (a) where the claimant satisfies the condition in paragraph 14(2)(a);	(a) (a) £46.75;
(b) (b) where the claimant satisfies the condition in paragraph 14(2)(b)—	(b) (b)
(i) in a case where there is someone in receipt of carer's allowance or if he or any partner satisfies that condition only by virtue of paragraph 14(5);	(i) £46.75;
(ii) in a case where there is no one in receipt of such an allowance.	(ii) £93.50.
(7) Disabled child premium.	(7) £45.08 in respect of each child or young person in respect of whom the condition specified in paragraph 16 is satisfied.
(8) Carer premium.	(8) £26.35 in respect of each person who satisfies the condition specified in paragraph 17.
(9) Enhanced disability premium where the conditions in paragraph 15 are satisfied.	(a) (9) (a) £18.13 in respect of each child or young person in respect of whom the conditions specified in paragraph 15 are satisfied; (b) £11.95 in respect of each person who is neither— (i) a child or young person, nor (ii) a member of a couple or a polygamous marriage, in respect of whom the conditions specified in paragraph 15 are satisfied; (c) £17.25 where the claimant is a member of a couple or a polygamous marriage and the conditions specified in paragraph 15 are satisfied in respect of a member of that couple or polygamous marriage.

SCHEDULE 5

Regulations 33(2) and 35(2)

Sums to be disregarded in the calculation of earnings

1. In the case of a claimant 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 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 claim the employment has been terminated otherwise than because of retirement, any earnings in respect of that employment except earnings to which regulation 32(1)(b) to (e), (g), (h) and (j) (in so far as it relates to regulation 32(1)(g) and (h)) applies;

(c) where at the date of claim—

(i) the employment has not been terminated; but

(ii) the claimant is not engaged in remunerative work,

any earnings in respect of that employment except earnings to which regulation 32(1)(d), (e), (i), (k) and (j) (in so far as it relates to regulation 32(1)(i)) applies.

2. In the case of a claimant who, before the date of claim—

(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 32(1)(e) applies;

(ii) where that employment has not been terminated, earnings to which regulation 32(1)(e), (i), (k) and (j) (in so far as it relates to regulation 32(1)(i)) applies.

3.—(1) In a case to which this paragraph applies and paragraph 4 does not apply, £20; but notwithstanding regulation 22 if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £20.

(2) This paragraph applies where the claimant's applicable amount includes an amount by way of the disability premium or severe disability premium under Schedule 4.

(3) This paragraph applies where—

(a) the claimant is a member of a couple and his applicable amount would, but for the higher pensioner premium under Schedule 4 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 claimant's applicable amount includes an amount by way of the higher pensioner premium under Schedule 4;

(b) the claimant 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 claimant was entitled by virtue of sub-paragraph (2) or (3) to a disregard of £20; and

(d) he or, if he is a member of a couple, he or his partner has continued in employment.

(5) 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 claimant 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 or the claimant ceased to be entitled to housing benefit.

4. In a case where the claimant is a lone parent, £25.

5.—(1) In a case to which neither paragraph 3 nor paragraph 4 applies to the claimant, and subject to sub-paragraph (2), where the claimant's applicable amount includes an amount by way of the carer premium under Schedule 4, £20 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 17(2) of that Schedule as being in receipt of carer's allowance.

(2) Where the carer premium is awarded in respect of the claimant and of any partner of his, their earnings shall for the purposes of this paragraph be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) shall not exceed £20 of the aggregated amount.

6. Where the carer premium is awarded in respect of a claimant who is a member of a couple and whose earnings are less than £20, 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 £20;

(b) other than one 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 £20.

7. In a case where paragraphs 3, 5, 6 and 8 do not apply to the claimant and he is one of a couple and a member of that couple is in employment, £10; but, notwithstanding regulation 22, if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £10.

8.—(1) In a case where paragraphs 3, 4, 5 and 6 do not apply to the claimant, £20 of earnings derived from one or more employments as—

(a) a part-time fire and rescue officer employed by the Northern Ireland Fire and Rescue Service Board established under Article 3 of the Fire and Rescue Services (Northern Ireland) Order 2006(**171**);

(b) an auxiliary coastguard in respect of coast rescue activities;

(c) a person engaged part-time in the manning or launching of a lifeboat;

(d) a member of any territorial or reserve force prescribed in Part I of Schedule 6 to the Social Security (Contributions) Regulations 2001(**172**);

(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(**173**), regulations made under section 2 of the Armed Forces Act 1966(**174**), 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(**175**) or a part-time police reserve trainee appointed under section 40 of that Act,

but, notwithstanding regulation 22, if this paragraph applies to a claimant it shall not apply to his partner except to the extent specified in sub-paragraph (2).

(2) If the claimant's partner is engaged in employment—

(**171**) S.I. 2006/1254 (N.I. 9)
(**172**) S.I. 2001/1004
(**173**) 1992 c. 39
(**174**) 1966 c. 45; section 2 was amended by section 2 of the Army Act 1992
(**175**) 2000 c. 32

(a) specified in sub-paragraph (1), so much of his earnings as would not in aggregate with the amount of the claimant's earnings disregarded under this paragraph exceed £20;

(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 claimant's earnings disregarded under this paragraph exceed £20.

9. Where the claimant is engaged in one or more employments specified in paragraph 8(1), but his earnings derived from such employments are less than £20 in any week and he is also engaged in any other employment so much of his earnings from that other employment, up to £5 if he is a single claimant, 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 £20.

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

11. Any amount or the balance of any amount which would fall to be disregarded under paragraph 20 or 21 of Schedule 6 had the claimant's income which does not consist of earnings been sufficient to entitle him to the full disregard thereunder.

12. Where a claimant is on income support or an income-based jobseeker's allowance, his earnings.

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

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

15. Any earnings of a child or young person.

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

17.—(1) In a case where the claimant is a person who satisfies at least one of the conditions set out in sub-paragraph (2), and his net earnings equal or exceed the total of the amounts set out in sub-paragraph (3), the amount of his earnings that falls to be disregarded under paragraphs 3 to 10 of this Schedule shall be increased by £14.90.

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

(a) the claimant, or if he is a member of a couple, either the claimant or his partner, is a person to whom regulation 20(1)(c) of the Working Tax Credit Regulations applies;

(b) the claimant—

(i) 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;

(ii) is a member of a couple and—

(aa) at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week; and

(bb) his applicable amount includes a family premium under paragraph 3 of Schedule 4;

(iii) is a lone parent who is engaged in remunerative work for on average not less than 16 hours per week, or

(iv) is, or if he is a member of a couple, at least one member of that couple is, engaged in remunerative work for on average not less than 16 hours per week, and—

(aa) the claimant's applicable amount includes a higher pensioner premium or a disability premium under paragraph 11 or 12 of Schedule 4 respectively; and

(bb) 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 sub-head (aa) and is engaged in remunerative work for on average not less than 16 hours per week; or

(c) the claimant is, or if he has a partner, one of them is, a person to whom regulation 18(3) of the Working Tax Credit Regulations (eligibility for 50 plus element) applies, or would apply if an application for working tax credit were to be made in his case.

(3) The following are the amounts referred to in sub-paragraph (1)—

(a) the amount to be disregarded from the claimant's earnings under paragraphs 3 to 10 of this Schedule;

(b) the amount of child care charges calculated as deductible under regulation 24(1)(c); and

(c) £14.90.

(4) The provisions of regulation 6 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 6

Regulation 37(2)

Sums to be disregarded in the calculation of income other than earnings

1. Any amount paid by way of tax on income which is to be taken into account under regulation 37.

2. Any payment in respect of any expenses incurred or to be incurred by a claimant 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 39(9).

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 claimant is on income support or an income-based jobseeker's allowance, the whole of his income.

5. Where the claimant is a member of a joint-claim couple for the purposes of the Jobseekers Order and his partner is on an income-based jobseeker's allowance, the whole of the claimant's income.

6. In the case of housing benefit which was in the form of a rate rebate only, where the claimant, or the person who was the partner of the claimant on 31st March 2003, was entitled on that date to income support or an income-based jobseeker's allowance but ceased to be so entitled on or before 5th April 2003 by virtue only of regulation 12 of the Housing Benefit (General) (Amendment No. 3) Regulations (Northern Ireland) 1999(**176**) as in operation at that date, the whole of his income.

7. Any disability living allowance.

(**176**)S.R. 1999 No. 416

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

(a) any payment specified in paragraph 7 or 10;

(b) income support;

(c) an income-based jobseeker's allowance.

9. Any mobility supplement under article 20 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(**177**) (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(**178**) or any payment intended to compensate for the non-payment of such a supplement.

10. Any attendance allowance.

11. Any payment to the claimant as holder of the Victoria Cross or of the George Cross or any analogous payment.

12.—(1) Any payment by way of an education maintenance allowance made pursuant to Article 50 or 51 of the Education and Libraries (Northern Ireland) Order 1986(**179**).

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to Article 50 or 51 of the Education and Libraries (Northern Ireland) Order 1986, in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance made pursuant to any provision specified in sub-paragraph (1).

13.—(1) Any payment made pursuant to section 1 or 3 of the 1950 Act except—

(a) a payment made as a substitute for income support, a jobseeker's allowance, incapacity benefit or severe disablement allowance;

(b) a payment of an allowance referred to in section 1(1B) of the 1950 Act;

(c) a payment intended to meet the cost of living expenses which relate to any one or more of the items specified in sub-paragraph (2) whilst a claimant is participating in an education, training or other scheme to help him enhance his employment prospects; or

(d) for the purpose only of assessing entitlement to housing benefit in respect of a dwelling other than the one which the claimant normally occupies as his home, a payment made to a person to whom regulation 7(6)(b) applies to the extent that the payment is made in respect of the cost of living away from home.

(2) The items specified in this sub-paragraph for the purposes of sub-paragraph (1)(c) are food, ordinary clothing or footwear, household fuel, rent or rates of the claimant or, where the claimant is a member of a family, any other member of his family.

(3) For the purposes of this paragraph "rent or rates" means eligible rent or rates less any deductions in respect of non-dependants which fall to be made under regulation 72.

14.—(1) Subject to sub-paragraph (2), any of the following payments—

(a) a charitable payment;

(b) a voluntary payment;

(c) a payment (not falling within head (a) or (b)) from a trust whose funds are derived from a payment made in consequence of any personal injury to the claimant;

(**177**) S.I. 2006/606

(**178**) 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. 1990/1300, S.I. 1991/708, S.I. 1992/702, S.I. 1995/445 and S.I. 2001/420

(**179**) S.I. 1986/594 (N.I. 3); Article 50 was amended by the Schedule to the Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760 (N.I. 14)) and Article 51 was substituted by Part II of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1))

(d) a payment under an annuity purchased—

(i) pursuant to any agreement or court order to make payments to the claimant, or

(ii) from funds derived from a payment made,

in consequence of any personal injury to the claimant; or

(e) a payment (not falling within head (a) to (d)) received by virtue of any agreement or court order to make payments to the claimant in consequence of any personal injury to the claimant.

(2) Sub-paragraph (1) shall not apply to a maintenance payment which is made or due to be made by—

(a) a former partner of the claimant, or a former partner of any member of the claimant's family; or

(b) the parent of a child or young person where that child or young person is a member of the claimant's family.

15. Any of the following, namely—

(a) a war disablement pension;

(b) a war widow's pension or war widower's pension;

(c) a pension payable to a person as a widow, widower or surviving civil partner under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865(**180**) or the Pensions and Yeomanry Pay Act 1884(**181**), or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(**182**) and any power of Her Majesty otherwise than under any statutory provision, to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;

(d) a guaranteed income payment;

(e) a payment made to compensate for the non-payment of such a pension or payment as is mentioned in any of the preceding sub-paragraphs;

(f) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in sub-paragraphs (a) to (d).

16. Subject to paragraph 35, £10 of 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.

17. Subject to paragraph 35, £15 of any—

(a) widowed mother's allowance paid pursuant to section 37 of the Act;

(b) widowed parent's allowance paid pursuant to section 39A of the Act(**183**).

18.—(1) Any income derived from capital to which the claimant is or is treated under regulation 48 as beneficially entitled but, subject to sub-paragraphs (2) and (3), not income derived from capital disregarded under paragraphs 1, 2, 4, 8, 14 or 26 to 29 of Schedule 7.

(2) Income derived from capital disregarded under paragraphs 2, 4 or 26 to 29 of Schedule 7 but only to the extent of—

(**180**) 1865 c.73
(**181**) 1884 c. 55
(**182**) 1977 c. 5
(**183**) Section 39A was inserted by Article 52(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(a) any mortgage repayments made in respect of the premises or land in the period during which that income accrued; or

(b) any rates which the claimant is liable to pay in respect of the premises or land and which are paid in the period during which that income accrued.

(3) Where income is derived from conacre or agistment letting any expenses reasonably incurred thereon including the repayment of interest and capital on any loan used for the purchase of land under the Northern Ireland Land Act 1925(**184**).

19. Where a claimant receives income under an annuity purchased with a loan which satisfies the following conditions—

(a) that the loan was made as part of a scheme under which not less than 90 per cent. of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of 2 or more persons (in this paragraph referred to as "the annuitants") who include the person to whom the loan was made;

(b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;

(c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;

(d) that the loan was secured on a dwelling in 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 Taxes Act (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(**185**);

(ii) in any other case the interest which is payable on the loan without deduction of such a sum.

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

(a) under regulations made in exercise of the powers conferred by Articles 50 and 51 of the Education and Libraries (Northern Ireland) Order 1986, that student's award; or

(b) 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.

21.—(1) Where the claimant is the parent of a student aged under 25 in advanced education who either—

(a) is not in receipt of any award, grant or student loan in respect of that education; or

(b) is in receipt of an award under Article 50(3) of the Education and Libraries (Northern Ireland) Order 1986 (awards made at the discretion of boards),

(**184**) 1925 c. 34
(**185**) Subsection (1A) was inserted by section 81(3) of the Finance Act 1994 (c. 9)

and the claimant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 20, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

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

(a) the weekly amount of the payments; or

(b) the amount by way of a personal allowance for a single claimant under 25 less the weekly amount of any award referred to in sub-paragraph (1)(b),

whichever is less.

22. Any payment made to the claimant by a child or young person or a non-dependant.

23. Where the claimant occupies a dwelling as his home and the dwelling is also occupied by a person other than one to whom paragraph 22 or 44 refers and there is a contractual liability to make payments to the claimant 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 respect of 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 £11.95, where the aggregate of any such payments is inclusive of an amount for heating.

24.—(1) Any income in kind, except where regulation 37(8)(b) applies.

(2) The reference in sub-paragraph (1) to "income in kind" does not include a payment to a third party made in respect of the claimant which is used by the third party to provide benefits in kind to the claimant.

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

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

(a) in accordance with regulations made under Article 59A of the Adoption (Northern Ireland) Order 1987(**186**) (permitted allowances);

(b) which is a payment made by an authority, as defined in Article 2 of the Children Order, in pursuance of Article 15 of, and paragraph 17 of Schedule 1 to, that Order (contribution by an authority to child's maintenance);

(c) pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002(**187**) or in accordance with a scheme approved by the Scottish Ministers under section 51 of the Adoption (Scotland) Act 1978(**188**) (schemes for payments of allowances to adopters);

(d) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989(**189**) (local authority contribution to a child's maintenance where the child is living with a person as a result of a residence order) or, as the case may be, section 50 of the Children Act 1975(**190**) (payments towards maintenance of children);

(**186**) S.I. 1987/2203 (N.I. 22); Article 59A was inserted by paragraph 164 of Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2))
(**187**) 2002 c.38
(**188**) 1978 c. 28
(**189**) 1989 c. 41
(**190**) 1975 c. 72

(e) in accordance with regulations made pursuant to section 14F of the Children Act 1989(**191**) (special guardianship support services),

to the extent specified in sub-paragraph (3).

(2) Any payment, other than a payment to which sub-paragraph (1)(c) applies, made pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.

(3) In the case of a child or young person, so much of the weekly amount of the payment as exceeds the amount included under Schedule 4 in the calculation of the claimant's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any.

27. Any payment made by—

(a) an authority, as defined in Article 2 of the Children Order, to a person who is caring for a child by virtue of arrangements made under Article 27(2)(a) of that Order (provision of accommodation and maintenance by an authority for children whom it is looking after) or by a voluntary organisation under Article 75(1)(a) of that Order (provision of accommodation by voluntary organisations); or

(b) a juvenile justice centre, within the meaning of Article 51(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998(**192**), under Article 43(2) of that Order to a person who is caring for a child and with whom that child is in the charge of under paragraph 4 of Schedule 2 to that Order.

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

(a) a Health and Social Services Board or HSS trust;

(b) a voluntary organisation;

(c) the person concerned pursuant to Article 36(7) of the Health and Personal Social Services Order(**193**); or

(d) a juvenile justice centre within the meaning of Article 51(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998.

29. Any payment made by an authority, as defined in Article 2 of the Children Order, in accordance with Article 18, 34C, 34D or 35A of that Order(**194**) (general duty of an authority to promote the welfare of children and powers to grant financial assistance to persons looked after or in, or formerly in, its care).

30.—(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 claimant occupies as his home; or

(b) under a regulated agreement as defined for the purposes of the Consumer Credit Act 1974(**195**) or under a hire-purchase agreement or a conditional sale agreement as defined for the purposes of Part VI of the Hire-Purchase Act (Northern Ireland) 1966(**196**).

(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—

(**191**) Section 14F was inserted by section 115 of the Adoption and Children Act 2002 (c. 38)
(**192**) S.I. 1998/1504 (N.I. 9)
(**193**) 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))
(**194**) Articles 34C and 34D were inserted by section 2(3) of the Children (Leaving Care) Act (Northern Ireland) 2002 (c. 11 (N.I.)) and Article 35A was substituted by section 4 of that Act
(**195**) 1974 c. 39
(**196**) 1966 c. 42 (N.I.); Part VI was substituted by paragraph 49 of Schedule 4 to the Consumer Credit Act 1974

(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 claimant as his home and which is required as a condition of the loan referred to in sub-paragraph (1)(a).

31. Any payment of income which by virtue of regulation 43 is to be treated as capital.

32. Any social fund payment made pursuant to Part VIII of the Act.

33. Any payment under Part X of the Act (Christmas bonus for pensioners).

34. 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.

35. The total of a claimant'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 22(2) to be disregarded under regulations 57(2)(b), 58(1)(d), 61(2) and 63(3) and paragraphs 16 and 17 shall in no case exceed £20 per week.

36. Any payment made under the legislation of, or under a scheme operating in, the Republic of Ireland which is analogous to any income to which this Schedule relates.

37.—(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 Eileen Trust or the Independent Living Funds.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers, and which is made to or for the benefit of—

(a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;

(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 claimant'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 claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers 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 claimant'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 claimant'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 to which sub-paragraph (1) refers, where—

(a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child 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 to which sub-paragraph (1) refers, where—

(a) that person at the date of his death ("the relevant date") had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, 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, the Eileen Trust, the Skipton Fund and the London Bombings Relief Charitable Fund.

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

39. Any payment made under arrangements made by the Department to compensate for the loss of housing benefit supplement under regulation 19A of the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983(**197**).

40. Any resettlement benefit paid to the claimant by virtue of regulation 3 of the Social Security (Hospital In-Patients) (Amendment No. 2) Regulations (Northern Ireland) 1987(**198**).

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 benefit Acts.

42. Any community charge benefit.

(**197**)S.R. 1983 No. 61
(**198**)S.R. 1987 No. 391

43. Any payment in consequence of a reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992(**199**) (reduction of liability for council tax).

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

(a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20.00, 100 per cent. of such payments; or

(b) where the aggregate of any such payments exceeds £20.00, £20.00 and 50 per cent. of the excess over £20.00.

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

45. 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;

(b) the Royal Warrant dated 19th February 1990 amending the Schedule to the Army Pensions Warrant 1977(**200**);

(c) the Queen's Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917(**201**);

(d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980(**202**);

(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(**203**),

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

46.—(1) Any payment or repayment made under regulation 5, 6 or 11 of the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 2004(**204**) (entitlement to full remission and payment, entitlement to partial remission and payment, 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).

47. Any payment made under regulation 8, 10 or 12 of the Welfare Foods Regulations (Northern Ireland) 1988(**205**) (failure to receive milk tokens, inability to obtain free vitamins or absence of beneficiary for less than a week).

(**199**) 1992 c. 14
(**200**) Army Code No. 13045 published by TSO
(**201**) 1917 c. 51; Queen's Regulations for the Royal Air Force are available from TSO
(**202**) 1980 c. 9
(**203**) Army Code No. 60589 published by TSO
(**204**) S.R. 2004 No. 91
(**205**) S.R. 1988 No. 137; relevant amending Regulations are S.R. 2003 No. 393, S.R. 2005 No. 519 and S.R. 2006 No. 180

48. Any payment made under a scheme established by the Northern Ireland Office to assist relatives and other persons to visit persons in custody.

49.—(1) Where a claimant'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 claimant's former partner, or the claimant'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 claimant's family except where that parent is the claimant or the claimant's partner.

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

(3) A payment made by the Department in lieu of maintenance shall, for the purposes of sub-paragraph (1), be treated as a payment of maintenance made by a person specified in head (a) or (b) of that sub-paragraph.

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

51. 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(**206**) to assist disabled persons to obtain or retain employment despite their disability.

52. Any guardian's allowance.

53. Any council tax benefit.

54.—(1) Where the claimant is in receipt of any benefit under Parts II, III or V of the Act or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, any increase in the rate of that benefit arising under Part IV (increases for dependants) or section 106(a) (unemployability supplement) of the 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 claimant's family.

(2) For the purposes of sub-paragraph (1), an addition to a contribution-based jobseeker's allowance under regulation 10(4) of the Jobseeker's Allowance (Transitional Provisions) (No. 2) Regulations (Northern Ireland) 1996(**207**) shall be treated as an increase of a benefit under the Act arising under Part IV of the Act.

55. Any supplementary pension under article 23(2) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (pensions to widows, widowers or surviving civil partners).

56. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983(**208**) (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

57.—(1) Any payment which is—

(a) made under any of the Dispensing Instruments to a widow, widower or surviving civil partner of a person—

(**206**) 1945 c. 6 (N.I.)
(**207**) S.R. 1996 No. 518
(**208**) S.I. 1983/686; Article 27(3) and paragraph 1(c) of Schedule 4 were added by, respectively, articles 2 and 3 of S.I. 1994/2021 and Schedule 4 was substituted by Schedule 3 to S.I. 2006/765

(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 23(2) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006.

(2) In this paragraph "the Dispensing Instruments"(**209**) 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).

58. Except in a case which falls under sub-paragraph (1) of paragraph 17 of Schedule 5, where the claimant is a person who satisfies any of the conditions of sub-paragraph (2) of that paragraph, any amount of working tax credit up to £14.90.

59. Any payment made under regulations made under section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002(**210**).

60.—(1) Subject to sub-paragraph (2), in respect of a person who is receiving, or who has received, assistance under the self-employment route, any payment to that person—

(a) to meet expenses wholly and necessarily incurred whilst carrying on the commercial activity;

(b) which is used or intended to be used to maintain repayments on a loan taken out by that person for the purpose of establishing or carrying on the commercial activity,

in respect of which such assistance is or was received.

(2) Sub-paragraph (1) shall apply only in respect of payments which are paid to that person from the special account as defined for the purposes of Chapter IVA of Part VIII of the Jobseekers Allowance Regulations.

61.—(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, household fuel or rent or rates of the claimant or where the claimant is a member of a family, any other member of his family.

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

"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;

"rent or rates" means eligible rent or rates less any deductions in respect of non-dependants which fall to be made under regulation 72.

62. Any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations (Northern Ireland) 2001(**211**).

63. Any payment made by the Executive to or on behalf of the claimant or his partner relating to a service which is provided to develop or sustain the capacity of the claimant or his partner to live independently in his accommodation.

(**209**) Copies of the Dispensing Instruments are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA

(**210**) 2002 c. 6 (N.I.)

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

SCHEDULE 7

Regulation 41(2)

Capital to be disregarded

1. The dwelling occupied as the home but, notwithstanding regulation 22, only one dwelling shall be disregarded under this paragraph.

2. Any premises or land acquired for occupation by the claimant which he intends to occupy as his home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises or land.

3. Any sum directly attributable to the proceeds of sale of—

(a) any premises formerly occupied by the claimant as his home; or

(b) any premises which the claimant continues to occupy as his home and which were occupied by him as his home immediately before the compulsory acquisition of those premises from him under any statutory provision,

which is to be used for the purchase of other premises or land intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase.

4. Any premises occupied in whole or in part as his home by—

(a) a partner or relative of a single claimant or any member of the family where that person is either aged 60 or over or incapacitated;

(b) the former partner of the claimant; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced or with whom he had formed a civil partnership that has been dissolved.

5. Where a claimant is on income support or an income-based jobseeker's allowance, the whole of his capital.

6. Where the claimant is a member of a joint-claim couple for the purposes of the Jobseekers Order and his partner is on income-based jobseeker's allowance, the whole of the claimant's capital.

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

8.—(1) The assets of any business owned in whole or in part by the claimant and for the purposes of which he is engaged as a self-employed earner, or if he has ceased to be 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 claimant 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,

for a period of 26 weeks from the date on which the claim for housing benefit is made, or is treated as made, or, if it is unreasonable to expect him to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so engaged or re-engaged.

(3) In the case of a person who is receiving assistance under the self-employment route, the assets acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is being received.

(4) In the case of a person who has ceased carrying on the commercial activity in respect of which assistance was received as specified in sub-paragraph (3), the assets relating to that activity for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

9.—(1) Subject to sub-paragraph (2), any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of—

(a) any payment specified in paragraphs 7, 9 or 10 of Schedule 6;

(b) an income-related benefit or supplementary benefit under the Supplementary Benefits (Northern Ireland) Order 1977(**212**), family income supplement under the Family Income Supplements Act (Northern Ireland)1971(**213**), working families' tax credit under section 127 of the Act, disabled person's tax credit under section 128 of the Act or housing benefit under the Housing Benefits (Northern Ireland) Order 1983(**214**);

(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) working tax credit and child tax credit,

but only for a period of 52 weeks from the date of the receipt of arrears or of the concessionary payment.

(2) In a case where the total of any arrears and, if appropriate, any concessionary payment referred to in sub-paragraph (1) relating to one of the specified payments, benefits or allowances amounts to £5,000 or more (referred to in this sub-paragraph and in sub-paragraph (3) as "the relevant sum") and is—

(a) paid in order to rectify or to compensate for, an official error as defined in regulation 1(2) of the Decisions and Appeals Regulations(**215**); and

(b) received by the claimant in full on or after 14th October 2001,

sub-paragraph (1) shall have effect in relation to such arrears or concessionary payment either for a period of 52 weeks from the date of receipt, or, if the relevant sum is received in its entirety during the award of housing benefit, for the remainder of that award if that is a longer period.

(3) For the purposes of sub-paragraph (2), "the award of housing benefit" means—

(a) the award in which the relevant sum is first received (or the first part thereof where it is paid in more than one instalment); and

(b) where that award is followed by one or more further awards which, or each of which, begins immediately after the end of the previous award, such further award provided that for that further award the claimant—

(i) is the person who received the relevant sum, or

(ii) is the partner of the person who received the relevant sum, or was that person's partner at the date of his death.

10. Any sum—

(a) paid to the claimant in consequence of damage to, or loss of the home or any personal possession and intended for its repair or replacement; or

(b) acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvement to the home,

(**212**) S.I. 1977/2156 (N.I. 27)
(**213**) 1971 c. 8 (N.I.)
(**214**) S.I. 1983/1121 (N.I. 14)
(**215**) The definition of "official error" was amended by regulation 3(2)(b) of S.R. 2002 No. 189 and paragraph 7(a)(ii) of Schedule 2 to S.R. 2003 No. 274

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.

11. Any sum—

(a) deposited with a housing association as a condition of occupying the home;

(b) which was so deposited and which is to be used for the purchase of another home, for the period of 26 weeks or such longer period as may be reasonable in the circumstances to enable the claimant to complete the purchase.

12. Any personal possessions except those which have been acquired by the claimant with the intention of reducing his capital in order to secure entitlement to housing benefit or to increase the amount of that benefit.

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

14. Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant or the claimant's partner, the value of the trust fund and the value of the right to receive any payment under that trust.

15.—(1) Any payment made to the claimant or the claimant's partner in consequence of any personal injury to the claimant or, as the case may be, the claimant's partner.

(2) But sub-paragraph (1)—

(a) applies only for the period of 52 weeks beginning with the day on which the claimant first receives any payment in consequence of that personal injury;

(b) does not apply to any subsequent payment made to him in consequence of that injury (whether it is made by the same person or another);

(c) ceases to apply to the payment or any part of the payment from the day on which the claimant no longer possesses it;

(d) does not apply to any payment from a trust where the funds of the trust are derived from a payment made in consequence of any personal injury to the claimant.

(3) For the purposes of sub-paragraph (2)(c), the circumstances in which a claimant no longer possesses a payment or a part of it include where the claimant has used a payment or part of it to purchase an asset.

(4) References in sub-paragraphs (2) and (3) to the claimant are to be construed as including references to his partner (where applicable).

16. The value of the right to receive any income under a life interest.

17. The value of the right to receive any income which is disregarded under paragraph 13 of Schedule 5 or paragraph 25 of Schedule 6.

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

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

20. Any payment made by an authority, as defined in Article 2 of the Children Order, in accordance with Article 18, 34C, 34D or 35A of that Order (general duty of an authority to promote the welfare of children and powers to grant financial assistance to persons looked after or in, or formerly in, its care).

21. Any social fund payment made pursuant to Part VIII of the Act.

22. Any refund of tax which falls to be deducted under section 369 of the Taxes Act(**216**) (deduction of tax from certain loan interest) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements to the home.

23. Any capital which by virtue of regulation 38 or 61 is to be treated as income.

24. 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.

25.—(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 Eileen Trust, the Independent Living Funds, the Skipton Fund or the London Bombings Relief Charitable Fund.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

(a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;

(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 claimant'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 claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers 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 claimant'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 claimant'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 to which sub-paragraph (1) refers, where—

(a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child 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.

(**216**) Section 369 was amended by section 58 of the Finance Act 1993 (c. 34), section 81 of the Finance Act 1994 (c. 9) and paragraph 6 of Schedule 18 to the Finance Act 1996 (c. 8)

(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 to which sub-paragraph (1) refers, where—

(a) that person at the date of his death ("the relevant date") had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, 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, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund.

26. Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from, or dissolution of his civil partnership with, his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling or, where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

27. Any premises or land where the claimant is taking reasonable steps to dispose of those premises or that land, 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 or that land.

28. Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings, whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.

29. Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

30. Any payment made under arrangements made by the Department to compensate for the loss of housing benefit supplement under regulation 19A of the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983.

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

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

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

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

35. 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.

36. Any payment made pursuant to section 1 of the 1950 Act(**217**), but only for the period of 52 weeks beginning on the date of receipt of the payment.

37. Any community charge benefit.

38. Any payment in consequence of a reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992 (reduction of liability for council tax), but only for a period of 52 weeks from the date of the receipt of the payment.

39. Any grant made in Great Britain to the claimant in accordance with a scheme made under section 129 of the Housing Act 1988(**218**) or section 66 of the Housing (Scotland) Act 1988(**219**) (schemes for payments to assist local housing authority and local authority tenants to obtain other accommodation) which is to be used—

(a) to purchase premises intended for occupation as his home; or

(b) to carry out repairs or alterations which are required to render premises fit for occupation as his home,

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

40. Any arrears of special war widows payment which is disregarded under paragraph 45 of Schedule 6 or of any amount which is disregarded under paragraph 55, 56 or 57 of that Schedule, but only for a period of 52 weeks from the date of the receipt of the arrears.

41.—(1) Any payment or repayment made under regulation 5, 6 or 11 of the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 2004 (entitlement to full remission and payment, entitlement to partial remission and payment, or repayment), but only for a period of 52 weeks from the date of the receipt of the payment or repayment.

(2) Any payment or repayment by the Department of Health, Social Services and Public Safety which is analogous to a payment or repayment mentioned in sub-paragraph (1), but only for a period of 52 weeks from the date of the receipt of the payment or repayment.

42. Any payment made under regulation 8, 10 or 12 of the Welfare Foods Regulations (Northern Ireland) 1988 (failure to receive milk tokens, inability to obtain free vitamins or absence of beneficiary for less than a week), but only for a period of 52 weeks from the date of the receipt of the payment.

43. Any payment made under a scheme established by the Northern Ireland Office to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of the receipt of the payment.

44. 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 to assist disabled persons to obtain or retain employment despite their disability.

(**217**) Section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(**218**) 1988 c. 50

(**219**) 1988 c. 43

45.—(1) Any sum of capital to which sub-paragraph (2) applies and—

(a) which is administered on behalf of a person by the High Court under the provisions of Order 80 or 109 of the Rules of the Supreme Court (Northern Ireland) 1980(**220**) or by a County Court under Order 44 of the County Court Rules (Northern Ireland) 1981(**221**) or Article 21 of the County Courts (Northern Ireland) Order 1980(**222**);

(b) which can only be disposed of by order or direction of any such court; or

(c) where the person concerned is under the age of 18, which can only be disposed of by order or direction prior to that person attaining age 18.

(2) This sub-paragraph applies to a sum of capital which is derived 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.

46. Any payment to the claimant as holder of the Victoria Cross or George Cross.

47. The amount of any child maintenance bonus payable by way of jobseeker's allowance or income support in accordance with Article 4 of the Child Support (Northern Ireland) Order 1995(**223**), or a corresponding payment under section 10 of the Child Support Act 1995(**224**), but only for a period of 52 weeks from the date of receipt.

48. In the case of a person who is receiving, or who has received, assistance under the self-employment route, any sum of capital which is acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is or was received but only for a period of 52 weeks from the date on which that sum was acquired.

49.—(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, household fuel or rent or rates of the claimant or, where the claimant is a member of a family, any other member of his family.

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

"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;

"rent or rates" means eligible rent or rates less any deductions in respect of non-dependants which fall to be made under regulation 72.

50.—(1) Any payment by way of an education maintenance allowance made pursuant to Article 50 or 51 of the Education and Libraries (Northern Ireland) Order 1986(**225**).

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to Article 50 or 51 of the Education and Libraries (Northern Ireland) Order 1986, in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance made pursuant to any provision specified in sub-paragraph (1).

(**220**) S.R. 1980 No. 346; Order 109 was added by S.R. 1986 No. 184
(**221**) S.R. 1981 No. 225
(**222**) S.I. 1980/397 (N.I. 3)
(**223**) S.I. 1995/2702 (N.I. 13)
(**224**) 1995 c. 34
(**225**) S.I. 1986/594 (N.I. 3); Article 50 was amended by the Schedule to the Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760 (N.I. 14)) and Article 51 was substituted by Part II of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1))

51. 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 claimant;

(b) the claimant's partner;

(c) the claimant's deceased spouse or deceased civil partner; or

(d) the claimant's partner's deceased spouse or deceased civil partner,

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

52.—(1) Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a member of a claimant'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 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 2 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) 2 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 20,

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 a claimant or a member of a claimant'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 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 2 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) 2 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 20,

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 a diagnosed person's family; or

(c) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital 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;

"trust payment" means a payment under a relevant trust.

53. The amount of any payment, other than a war pension within the meaning of section 25 of the Social Security Act 1989(**226**), to compensate for the fact that the claimant, the claimant's partner, the claimant's deceased spouse or deceased civil partner or the claimant's partner's deceased spouse or deceased civil partner—

(a) was a slave labourer or a forced labourer;

(b) had suffered property loss or had suffered personal injury; or

(c) was a parent of a child who had died,

during the Second World War.

54. Any payment made by the Executive to or on behalf of the claimant or his partner relating to a service which is provided to develop or sustain the capacity of the claimant or his partner to live independently in his accommodation.

55. Any payment made under regulations made under section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002.

56. Any payment made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002(**227**).

(**226**) 1989 c. 24
(**227**) 2002 c. 38

57. Any payment made to the claimant in accordance with regulations made pursuant to section 14F of the Children Act 1989(**228**) (special guardianship support services).

58. Where an ex-gratia payment has been 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.

SCHEDULE 8 Regulations 70 and 78(7)

Extended payments of housing benefit

PART I

Conditions for an extended payment

1. The conditions prescribed in this paragraph are that the Department has certified to the relevant authority—

(a) that the claimant or his partner was entitled to and in receipt of income support or an income-based jobseeker's allowance or that the claimant and his partner were entitled to and in receipt of a joint-claim jobseeker's allowance and that entitlement has ceased;

(b) the relevant day in his case;

(c) that entitlement to income support or an income-based jobseeker's allowance had ceased by reason of the claimant or his partner—

(i) commencing employment as an employed or self employed earner;

(ii) increasing their earnings from such employment, or

(iii) increasing the number of hours worked in such employment; and

(d) that the claimant had been entitled to and in receipt of income support or a jobseeker's allowance for a continuous period of at least 26 weeks until the relevant day, and for the purpose of this sub-paragraph—

(i) a claimant satisfies the conditions of this sub-paragraph if he has been entitled to and in receipt of a combination of income support and a jobseeker's allowance for at least 26 weeks and for the purposes of this sub-paragraph, a reference to the claimant being entitled to and in receipt of a jobseeker's allowance shall include a reference to the claimant and his partner being entitled to and in receipt of a joint-claim jobseeker's allowance; and

(ii) references to the claimant include references to his partner.

2. The conditions prescribed in this paragraph are that the claimant or the claimant's partner—

(a) notifies either the designated office or the appropriate office that he or his partner—

(i) has commenced, or is about to commence, remunerative work;

(ii) has commenced, or is about to commence, receiving remuneration for work or an increased amount of remuneration for work, or

(iii) has commenced, or is about to commence, an increased number of hours of work,

so that entitlement to income support or to an income-based jobseeker's allowance ceases and that work or, as the case may be, remuneration, is expected to last 5 weeks or more; and

(**228**) 1989 c. 41; section 14F was inserted by section 115 of the Adoption and Children Act 2002 (c. 38)

(b) makes that notification no later than 4 weeks after the day on which the claimant or his partner first undertakes the remunerative work referred to in sub-paragraph (a)(i) or first receives remuneration for the work or an increased amount of remuneration for the work referred to in sub-paragraph (a)(ii), or first commences the increased number of hours of work referred to in sub-paragraph (a)(iii).

PART II

Calculation and payment of an extended payment

3.—(1) Subject to the following provisions of this paragraph and except in the case of a mover, the amount of the extended payment shall be equal to the amount of housing benefit which was payable to the claimant for the last benefit week before he ceased to be entitled to housing benefit.

(2) In a case where the last benefit week referred to in sub-paragraph (1) fell, in whole or in part, within a rent and rate-free period, the last benefit week for the purposes of that sub-paragraph shall be taken to be the last benefit week that did not fall within a rent and rate-free period.

(3) Where the last benefit week before he ceased to be entitled to housing benefit was a week in which the claimant's eligible rent or rates was calculated in accordance with regulation 78(4)(c), sub-paragraph (1) shall have effect as if the reference to the last benefit week before he ceased to be entitled to housing benefit was a reference to the week before that week.

(4) Subject to sub-paragraph (5) the extended payment shall be payable for each of the weeks in the period specified in regulation 70(6), and shall be paid at such time and in such manner as is appropriate, having regard to—

(a) the times at which and the frequency with which a person's liability to make payment of rent or rates arises; and

(b) the reasonable needs and convenience of the person entitled thereto.

(5) No extended payment shall be payable for a week which is a rent and rate-free period for the purposes of regulation 79(1).

Movers

4. Paragraphs 5 to 7 below apply to movers from—

(a) the day the move takes place where that day is a Monday; or

(b) from the Monday following the day the move takes place where that day is not a Monday.

Movers and rent allowances

5.—(1) Subject to sub-paragraph (2), in the case of a mover whose housing benefit was in the form of a rent allowance, the Executive shall make an extended payment to that mover calculated on the same basis as in paragraph 3 and, for these purposes, the mover shall be treated as continuing to occupy and be liable to make payments in respect of the dwelling he was occupying as his home immediately before he ceased to be entitled to housing benefit.

(2) Notwithstanding sub-paragraph (1), in a case where that mover's liability to make payments in respect of the second dwelling would be to the Executive, any extended payment shall be determined as provided in paragraph 7(b).

Movers and rent and rate rebates

6. Where, in a case of a mover—

(a) his housing benefit was in the form of a rent and rate rebate; and

(b) he claims an extended payment,

the Executive shall, upon receiving the mover's claim for an extended payment, which meets the requirements of regulation 70(1), make an extended payment, calculated in accordance with paragraph 7, to that mover.

Movers and extended payments

7. In a case to which paragraph 5(2) or 6 applies and a mover's liability referred to in that paragraph is—

(a) other than to the Executive, the extended payment shall be a payment by way of rent allowance calculated in accordance with paragraph 3;

(b) to the Executive, the extended payment shall be by way of a rent and rate rebate to the value of such part of the rent and rates in respect of the period specified in regulation 70(6) as is eligible for housing benefit, calculated in accordance with regulations 11 to 14, less, in a case where the rebate to which paragraph 6 refers, or the rent allowance to which paragraph 5 refers, as the case may be, was subject to any deductions in respect of non-dependants pursuant to regulations 68 and 72, the amount of those deductions.

Maximum Housing Benefit

8. In a case to which paragraph 7(b) or 9 applies the maximum housing benefit of a mover shall be calculated in accordance with regulation 68, save that no deduction shall be made in respect of non-dependants, other than any that fall to be taken into account pursuant to those paragraphs.

Movers and rates rebate

9. In the case of a mover whose housing benefit was in the form of a rate rebate only the extended payment shall be by way of a discharge to the value of such part of the liability to rates for the period specified in regulation 70(6)(a), less, in a case where the rebate to which paragraph 3 refers was subject to any deductions in respect of non-dependants pursuant to regulations 68(b) and 72, the amount of those deductions.

Movers with 2 homes

10. Subject to Part III, any extended payment under this Part shall be without prejudice to any entitlement the claimant may have pursuant to regulation 7(6).

PART III

Adjustment of entitlement in respect of an extended payment

11. Where for any week—

(a) a person is entitled to an extended payment; and

(b) he also claims and is awarded housing benefit,

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

PART IV

Interpretation

12. In this Schedule—

"claimant" means a person claiming an extended payment;

"the relevant day" means the day on which the claimant's entitlement to income support or an income-based jobseeker's allowance ceased;

"second dwelling" means the dwelling to which a person has moved, or is about to move, which he is or will be occupying as his new home, and where the liability to make payments of rent or rates or both in respect of his dwelling follows on immediately from the liability to make payments of rent or rates or both in respect of his previous dwelling.

SCHEDULE 9

Regulation 71

Extended payments (severe disablement allowance and incapacity benefit) of housing benefit

Condition for an extended payment (severe disablement allowance and incapacity benefit)

1. The condition prescribed in this paragraph is that the claimant or the claimant's partner—

(a) notifies either the designated office or an appropriate office that he or his partner—

(i) has commenced, or is about to commence, remunerative work;

(ii) has commenced, or is about to commence, receiving remuneration for work or an increased amount of remuneration for work, or

(iii) has commenced, or is about to commence, an increased number of hours of work,

so that entitlement to severe disablement allowance or incapacity benefit ceases and that work, or as the case may be, remuneration, is expected to last 5 weeks or more; and

(b) the notification is made no later than 4 weeks after the day on which the claimant or his partner first undertakes the remunerative work referred to in sub-paragraph (a)(i), first receives remuneration for the work or an increased amount of remuneration for the work referred to in sub-paragraph (a)(ii), or first commences the increased number of hours of work referred to in sub-paragraph (a)(iii).

Calculation and payment of an extended payment (severe disablement allowance and incapacity benefit)

2.—(1) Subject to the following provisions of this paragraph and except in the case of a mover, the amount of the extended payment (severe disablement allowance and incapacity benefit) shall be equal to the amount of housing benefit which was payable to the claimant for the last benefit week before he ceased to be entitled to housing benefit.

(2) In a case where the last benefit week referred to in sub-paragraph (1) fell, in whole or in part, within a rent and rate-free period, the last benefit week for the purposes of that sub-paragraph shall be taken to be the last benefit week that did not fall within a rent and rate-free period.

(3) Where the last benefit week before he ceased to be entitled to housing benefit was a week in which the claimant's eligible rent or rates was calculated in accordance with regulation 78(4)(c), sub-paragraph (1) shall have effect as if the reference to the last benefit week before he ceased to be entitled to housing benefit was a reference to the week before that week.

(4) Subject to sub-paragraph (5), the extended payment (severe disablement allowance and incapacity benefit) shall be payable for each of the weeks in the period specified in regulation 71(6)(a), and shall be paid at such time and in such manner as is appropriate, having regard to—

(a) the times at which and the frequency with which a person's liability to make payment of rent or rates arises; and

(b) the reasonable needs and convenience of the person entitled thereto.

(5) No extended payment (severe disablement allowance and incapacity benefit) shall be payable for a week which is a rent and rate-free period for the purposes of regulation 79(1).

Movers

3. Paragraphs 4 to 6 apply to movers from—

(a) the day the move takes place where that day is a Monday; or

(b) from the Monday following the day the move takes place where that day is not a Monday.

Movers and rent allowances

4.—(1) Subject to sub-paragraph (2), in the case of a mover whose housing benefit was in the form of a rent allowance, the Executive shall make an extended payment (severe disablement allowance and incapacity benefit) to that mover calculated on the same basis as in paragraph 2, and, for these purposes, the mover shall be treated as continuing to occupy and be liable to make payments in respect of the dwelling he was occupying as his home immediately before he ceased to be entitled to housing benefit.

(2) Notwithstanding sub-paragraph (1), in a case where that mover's liability to make payments in respect of the second dwelling would be to the Executive, any extended payment (severe disablement allowance and incapacity benefit) shall be made by the Executive and shall be determined as provided in paragraph 6(b).

Movers and rent and rate rebates

5. Where, in the case of a mover—

(a) his housing benefit was in the form of a rent and rate rebate; and

(b) he claims an extended payment (severe disablement allowance and incapacity benefit),

the Executive shall, upon receiving the mover's claim for an extended payment (severe disablement allowance and incapacity benefit), which meets the requirements of regulation 71(1), make an extended payment (severe disablement allowance and incapacity benefit), calculated in accordance with paragraph 6, to that mover.

Movers and extended payments (severe disablement allowance and incapacity benefit)

6. In a case to which paragraph 4(2) or 5 applies and where a mover's liability referred to in that paragraph is—

(a) other than to the Executive, the extended payment (severe disablement allowance and incapacity benefit) shall be a payment by way of rent allowance calculated in accordance with paragraph 2;

(b) to the Executive, the extended payment (severe disablement allowance and incapacity benefit) shall be by way of a rent and rates rebate to the value of the lesser of—

(i) such part of the rent and rates in respect of the period specified in regulation 71(6)(a) as is eligible for housing benefit, calculated in accordance with regulations 11 to

14, less, in a case where the rebate to which paragraph 5 refers, or the rent allowance to which paragraph 4 refers, as the case may be, was subject to any deductions in respect of non-dependants pursuant to regulations 68 and 72, the amount of those deductions, or

(ii) the amount of extended payment (severe disablement allowance and incapacity benefit) calculated in accordance with paragraph 2.

Maximum housing benefit

7. The maximum housing benefit of a mover the amount of whose extended payment (severe disablement allowance and incapacity benefit) is calculated in accordance with paragraph 6(b)(i) shall be calculated in accordance with regulation 68, save that no deduction shall be made in respect of non-dependants, other than any that fall to be taken into account pursuant to paragraph 6(b)(i).

Movers and rate rebates

8. In the case of a mover whose housing benefit was in the form of a rate rebate only the extended payment shall be by way of a discharge to the value of such part of the liability to rates for the period specified in regulation 71(6)(a), less, in a case where the rebate to which paragraph 5 refers was subject to any deductions in respect of non-dependants pursuant to regulation 68(b) and 72, the amount of those deductions.

Movers with 2 homes

9. Subject to paragraph 10, any extended payment (severe disablement allowance and incapacity benefit) shall be without prejudice to any entitlement the claimant may have pursuant to regulation 7(6).

Adjustment of entitlement in respect of an extended payment (severe disablement allowance and incapacity benefit)

10. Where for any week—

(a) a person is entitled to an extended payment (severe disablement allowance and incapacity benefit); and

(b) he also claims and is awarded housing benefit,

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

Interpretation

11. In this Schedule—

"claimant" means a person claiming an extended payment (severe disablement allowance and incapacity benefit);

"second dwelling" means the dwelling to which a person has moved, or is about to move, which he is or will be occupying as his new home, and where the liability to make payments of rent or rates or both in respect of his dwelling follows on immediately from the liability to make payments of rent or rates or both in respect of his previous dwelling.

SCHEDULE 10 Regulation 86

Matters to be included in decision notice

PART I

General

1. The statement of matters to be included in any decision notice issued by a relevant authority to a person, and referred to in regulation 86 and in regulation 10 of the Decisions and Appeals Regulations are those matters set out in the following provisions of this Schedule.

2. Every decision notice shall include a statement as to the right of any person affected by that decision to request a written statement under regulation 86(2) and the manner and time in which to do so.

3. Every decision notice shall include a statement as to the right of any person affected by that decision to make an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations and, where appropriate, to appeal against that decision and the manner and time in which to do so.

4. Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall include a statement as to whether the original decision in respect of which the person made his representations has been confirmed or revised and where the relevant authority has not revised the decision the reasons why not.

5. Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall, if the original decision has been revised, include a statement as to the right of any person affected by that decision to apply for a revision in accordance with regulation 4(1)(a) of those Regulations and the manner and time in which to do so.

6. An authority may include in the decision notice any other matters not prescribed by this Schedule which it sees fit, whether expressly or by reference to some other document available without charge to the person.

7. Parts II, III and VI shall apply only to the decision notice given on a claim.

8. Where a decision notice is given following a revision of an earlier decision—

(a) made of the authority's own motion which results in a revision of that earlier decision; or

(b) made following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations, whether or not resulting in a revision of that earlier decision,

that notice shall, subject to paragraph 6, contain a statement only as to all the matters revised.

PART II

Awards where income support or an income-based jobseeker's allowance is payable

9. Where a person on income support or an income-based jobseeker's allowance is awarded housing benefit, the decision notice shall include a statement as to—

(a) his weekly eligible rates, if any;

(b) his weekly eligible rent, if any;

(c) the amount and an explanation of any deduction made under paragraph 6(2) or (3) of Schedule 1, if any, and that the deduction may be varied if he provides to the authority evidence on which it may estimate the actual or approximate amount of that service charge;

(d) the amount of and the category of non-dependant deductions made under regulation 72, if any;

(e) the normal weekly amount of rent allowance, or rent rebate or rate rebate, as the case may be, to which he is entitled;

(f) in the case of a rent allowance and a rate rebate paid as if it were a rent allowance, the day of payment, and the period in respect of which payment of that allowance is to be made;

(g) the first day of entitlement to an allowance or rebate; and

(h) his duty to notify any change of circumstances which might affect his entitlement to, or the amount of, housing benefit and (without prejudice to the extent of the duty owed under regulation 84) the kind of change of circumstances which is to be notified, either upon the notice or by reference to some other document available to him on application and without charge.

PART III

Awards where no income support or an income-based jobseeker's allowance is payable

10. Where a person is not on income support or on an income-based jobseeker's allowance but is awarded housing benefit, the decision notice shall include a statement as to—

(a) the matters set out in paragraph 9;

(b) his applicable amount and how it is calculated;

(c) his weekly earnings; and

(d) his weekly income other than earnings.

PART IV

Awards where direct payments made to landlords

11. Where a decision has been made under regulation 92 or 93, the decision notice shall include a statement—

(a) as to the amount of housing benefit which is to be paid direct to the landlord and the date from which it is to be paid; and

(b) informing the landlord of the duty imposed upon him to notify the Executive of—

(i) any change in circumstances which might affect the claimant's entitlement to housing benefit, or the amount of housing benefit payable in his case, and

(ii) the kind of change of circumstances which is to be notified;

(c) informing both landlords and claimants that where a payment of housing benefit is recoverable from a landlord and the recovery is made from housing benefit payable to the landlord to discharge (in whole or in part) an obligation owed to him by a claimant, then, in a case where that claimant is not the person on whose behalf the recoverable amount was paid, that obligation shall nonetheless be taken to be discharged by the amount so recovered,

and the notice shall be sent both to the claimant and to the landlord.

12. In this Schedule, "landlord" has the same meaning as in regulation 92.

PART V

Notice where income of non-dependant is treated as claimant's

13. Where an authority makes a decision under regulation 23 the decision notice shall contain a statement as to—

(a) the fact that a decision has been made by reference to the income and capital of the claimant's non-dependant; and

(b) the relevant authority's reasons for making that decision.

PART VI

Notice where no award is made

14. Where a person is not awarded housing benefit—

(a) either on grounds of income or because the amount of any housing benefit is less than the minimum housing benefit prescribed by regulation 73, the decision notice shall include a statement as to—

(i) the matters set out in paragraph 9(a) to (d), and in a case where the amount of entitlement is less than the minimum amount of housing benefit prescribed, paragraph 9(e) also;

(ii) the matters set out in paragraph 10(b) to (d) where the person is not on income support or an income-based jobseeker's allowance, and

(iii) where the amount of entitlement is less than the minimum amount of housing benefit prescribed, that fact and that such entitlement is not payable;

(b) for any reason other than one mentioned in sub-paragraph (a), the decision notice shall include a statement as to the reason why no award has been made.

PART VII

Notice where recoverable overpayment

15.—(1) Where the appropriate authority makes a decision that there is a recoverable overpayment within the meaning of regulation 97, the decision notice shall include a statement as to—

(a) the fact that there is a recoverable overpayment;

(b) the reason why there is a recoverable overpayment;

(c) the amount of the recoverable overpayment;

(d) how the amount of the recoverable overpayment was calculated;

(e) the benefit weeks to which the recoverable overpayment relates; and

(f) where recovery of the recoverable overpayment is to be made by deduction from a rent allowance or rebate or rate rebate, as the case may be, that fact and the amount of the deduction.

(2) In a case where it is—

(a) determined that there is a recoverable overpayment;

(b) determined that that overpayment is recoverable from a landlord; and

(c) decided that recovery of that overpayment is to be made by deduction from a rent allowance paid to that landlord to discharge (in whole or in part) an obligation owed to him by a claimant ("claimant A"), not being the claimant on whose behalf the recoverable amount was paid,

the decision notice sent to that landlord shall identify both—

(i) the person on whose behalf the recoverable amount was paid to that landlord, and

(ii) claimant A.

PART VIII

Notice following a decision on a work-focused interview

16.—(1) This Part applies in a case where a decision has been made in accordance with regulation 10 of the Social Security (Work-focused Interviews) Regulations (Northern Ireland) 2003(**229**) that a person has failed to take part in a work-focused interview.

(2) In a case where one of the consequences specified in sub-paragraphs (3) and (4) apply, the decision notice shall include a statement as to the person's right of appeal against the decision that he failed to take part in a work-focused interview.

(3) In a case where the consequence of the failure to take part is that the entitlement to housing benefit terminates, the decision notice shall include a statement as to—

(a) the last date of the entitlement to housing benefit;

(b) the reason entitlement terminated.

(4) In a case where the consequence of the failure to take part is that the amount of housing benefit payable is reduced, the decision notice shall include a statement as to—

(a) the amount by which the housing benefit is reduced;

(b) the date from which the reduction takes effect; and

(c) the reason for the reduction.

(5) In a case where a new decision is made reversing an earlier decision that a person failed to take part in a work-focused interview, the decision notice shall include a statement as to—

(a) the date from which the consequences of the failure cease to apply; and

(b) the reason for the new decision.

(**229**)S.R. 2003 No. 274

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate existing provisions relating to housing benefit for claimants who have not attained the qualifying age for state pension credit and for those who have attained that age and are receiving, or whose partner is receiving, income support or income-based jobseeker's allowance. In the case of a woman the qualifying age for state pension credit is pensionable age and in the case of a man it is the age which is pensionable age in the case of a woman born on the same day as the man (section 1(6) of the State Pension Credit Act (Northern Ireland) 2002). Provisions relating to those claimants who have attained the qualifying age for state pension credit other than those who are, or whose partner is, receiving income support or income-based jobseeker's allowance are contained in the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006.

Part I of the Regulations contains general provisions. These Regulations are to be read, where appropriate, with the Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006 ("the Consequential Provisions Regulations").

Part II makes provision in relation to the circumstances in which a person is or is not to be treated as occupying a dwelling as his home and is or is not to be treated as liable to make payments for a dwelling.

Part III specifies those payments by way of rent or rates which are to be eligible for the payment of housing benefit and for decisions by the Northern Ireland Housing Executive in rent allowance cases.

Part IV specifies the circumstances in which a person is or is not to be treated as responsible for another person and who is to be treated as a member of the same household as a claimant for housing benefit.

Part V and Schedule 4 provide for the calculation of the applicable amount in respect of a person's entitlement to housing benefit, by reference to which the amount of his benefit is calculated. Provision is made with respect to polygamous marriages.

Part VI provides for the calculation of the income and capital of a claimant for housing benefit, the earnings of employed and self-employed earners, the treatment of income other than earnings including notional income, with the sums to be disregarded set out in Schedules 5 and 6. Calculation of capital is also dealt with, with capital to be disregarded set out in Schedule 7.

Part VII provides for the treatment of students, their entitlement to housing benefit and the calculation of their income.

Part VIII provides for the maximum amount of housing benefit payable and for the housing benefit taper, extended payments and non-dependant deductions.

Part IX contains provisions as to when housing benefit is to begin, together with provisions relating to change of circumstances and the date those changes take effect.

Part X provides for the making, amendment and withdrawal of claims, the evidence and information required in connection with claims and the duty to notify changes of circumstances.

Part XI provides for the determination of questions arising on claims and the notification of decisions by authorities.

Part XII provides for the payment of housing benefit, including to whom payments are to be made and the withholding of benefit.

Part XIII provides for the recovery of overpaid housing benefit, what constitutes a recoverable overpayment and the method of recovery.

Part XIV provides that the Northern Ireland Housing Executive may require certain landlords and their agents to supply relevant information .

These Regulations are to be read, where appropriate, with the Consequential Provisions Regulations, which revoke the Regulations consolidated by these Regulations. The Regulations are made for the purpose only of consolidating other regulations revoked by them and accordingly, by virtue of section 149(3) of, and paragraph 9 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) for prior reference to the Social Security Advisory Committee.