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STATUTORY RULES OF NORTHERN IRELAND

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**2008 No. 280**

**SOCIAL SECURITY**

**The Employment and Support Allowance  
Regulations (Northern Ireland) 2008**

*Made - - - - 1st July 2008*

*Coming into operation in accordance with regulation 1*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by section 5(1) of the Social Security Administration (Northern Ireland) Act 1992<sup>(1)</sup> and Article 21(1)(a) of the Social Security (Northern Ireland) Order 1998<sup>(2)</sup>, and now vested in it<sup>(3)</sup>, and sections 2(1)(a) and (c) and (4)(a) and (c), 3(1)(c), (2)(b) and (d) and (3), 4(2)(a), (3) and (6) (a) and (c), 5(2) and (3), 8(1) to (3), (4)(a) and (b), (5) and (6), 9(1) to (3) and (4)(a) and (b), 11(1), (2)(a) to (g), (3) to (5), (6)(a) and (7)(c), 12(1), (2)(a) to (h) and (3) to (7), 14(1) and (2)(a) and (b), 16(2)(a) and (4), 17, 18(1), (2) and (4), 20(2) to (7), 23(1) and (3), 24(1), (2)(b) and (3), 25(1) and (2) and 26(1) of, and paragraphs 1(4), 3(2), 4(1)(a) and (c), (3) and (4), 6(1)(b), (2) to (5), (7) and (8) of Schedule 1 and paragraphs 1 to 7, 8(1), 9, 10, 12 and 14 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007<sup>(4)</sup>.

This Rule contains only regulations made by virtue of, or consequential upon, provisions of Part 1 of the Welfare Reform Act (Northern Ireland) 2007.

**PART 1**

**GENERAL**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Employment and Support Allowance Regulations (Northern Ireland) 2008 and shall, subject to paragraphs (2) and (3), come into operation on 27th October 2008.

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(1) 1992 c. 8; section 5(1) was amended by Article 3(1) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)), Article 70 of, and paragraph 60(1) of Schedule 6 to, the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and paragraph 4(4) of Schedule 3 to the [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2 \(N.I.\)\)](#)

(2) S.I. 1998/1506 (N.I. 10)

(3) See Article 8(b) of S.R. 1999 No. 481

(4) 2007 c. 2 (N.I.); see definitions of “employment” and “employed”, “period of limited capability for work” and “week” in section 24(1)

(2) Regulation 128(6)(a) and paragraph 15(2) of Schedule 6, so far as they apply to a maintenance calculation, in relation to a particular case shall come into operation on the day on which paragraph 12(e) of Schedule 3 to the 2000 Act comes into operation for the purposes of that type of case.

(3) Regulation 82 and paragraph 4 of Schedule 8, so far as they apply to additional statutory paternity pay, shall come into operation on the day on which regulations made under or by virtue of sections 167ZEA to 167ZEE of the Contributions and Benefits Act(5) come into operation.

## Interpretation

### 2.—(1) In these Regulations—

“Abbeyfield Home” means an establishment run by the Abbeyfield Society including any body corporate or incorporate which is affiliated to that Society;

“the Act” means the Welfare Reform Act (Northern Ireland) 2007;

“action plan” has the meaning given by regulation 58;

“adoption leave” means a period of absence from work on ordinary or additional adoption leave under Article 107A or 107B of the Employment Rights Order(6);

“aircraft worker” means a person who is, or has been, employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

but does not include a person who is in employment as a member of Her Majesty’s forces;

“the Armed Forces and Reserve Forces Compensation Scheme” means the scheme established under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004(7);

“attendance allowance” means—

- (a) an attendance allowance under section 64 of the Contributions and Benefits Act(8);
- (b) an increase of disablement pension under section 104 or 105 of that Act (increases where constant attendance needed and for exceptionally severe disablement);
- (c) a payment under regulations made under paragraph 4(2)(b) of Schedule 8 to that Act (payments for constant attendance in workmen’s compensation cases);
- (d) a payment by virtue of Article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(9) or any analogous payment;
- (e) any payment based on the need for attendance which is paid as an addition to a war disablement pension;

“the benefit Acts” means the Contributions and Benefits Act, the Jobseekers Order and Part 1 of the Act;

“benefit week” means a period of 7 days ending on such day as the Department may direct but for the purposes of calculating any payment of income “benefit week” means the period of 7 days ending on the day before the first day of the first benefit week following the date of

(5) Sections 167ZEA to 167ZEE are inserted by Articles 8 to 12 of the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16))

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

(7) 2004 c. 32

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

(9) S.I. 1983/686; relevant amending instruments are S.I. 1984/1675 and S.I. 2001/420

claim or the last day on which an employment and support allowance is paid if it is in payment for less than a week;

“board and lodging” means—

- (a) accommodation provided to a person or, if the person is a member of a family, to that person or any other member of that person’s 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 that person’s family) and are consumed in that accommodation or associated premises; or
- (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of the person or any other member of the person’s family, or other than on a commercial basis;

“carer’s allowance” means an allowance under section 70 of the Contributions and Benefits Act(10);

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

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

“the Children Order” means the Children (Northern Ireland) Order 1995(11);

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

“concessionary payment” means a payment made under arrangements made by the 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 benefit Acts are charged;

“confinement” has the meaning given by section 167(1) of the Contributions and Benefits Act(12);

“councillor” means a member of a district council;

“councillor’s allowance” means such payments for or in connection with the work which a person undertakes as a councillor;

“couple” means—

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

and for the purposes of paragraph (d), 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;

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(10) Section 70 was amended by Articles 2(2)(a) and 3 of S.R. 2002 No. 321

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

(12) The definition of “confinement” was amended by Article 4(b) of the Still Birth (Definition) (Northern Ireland) Order 1992 (S.I. 1992/1310 (N.I. 10))

“the Decisions and Appeals Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999<sup>(13)</sup>;

“the Department”, for the purposes of Chapters 2 and 3 of Part 8, includes the Department for Employment and Learning;

“dependent child” means any child or qualifying young person who is treated as the responsibility of the claimant or the claimant’s partner, where that child or young person is a member of the claimant’s household;

“descriptor” means, in relation to an activity specified in column (1) of Schedule 2, a descriptor in column (2) of that Schedule which describes a person’s ability to perform that activity;

“the Disabled Persons (Employment) Act” means the Disabled Persons (Employment) Act (Northern Ireland) 1945<sup>(14)</sup>;

“disability living allowance” means a disability living allowance under section 71 of the Contributions and Benefits Act<sup>(15)</sup>;

“doctor” means a registered medical practitioner, or in the case of a medical practitioner practising outside the United Kingdom of whom the Department may request a medical opinion, a person registered or recognised as such in the country in which the person undertakes medical practice;

“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;

“dwelling occupied as the home” means the dwelling together with any garage, garden and outbuildings normally occupied by the claimant as the claimant’s home, including any premises 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;

“the Education and Libraries Order” means the Education and Libraries (Northern Ireland) Order 1986<sup>(16)</sup>;

“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;

“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;

“employment” includes any trade, business, profession, office or vocation and “employed” has a corresponding meaning;

“the Employment and Training Act” means the Employment and Training Act (Northern Ireland) 1950<sup>(17)</sup>;

“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996<sup>(18)</sup>;

“failure determination” has the meaning given by regulation 63(1);

<sup>(13)</sup> S.R. 1999 No. 162

<sup>(14)</sup> 1945 c. 6 (N.I.)

<sup>(15)</sup> Section 71 was amended by Article 64(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

<sup>(16)</sup> S.I. 1986/594 (N.I. 3)

<sup>(17)</sup> 1950 c. 29 (N.I.)

<sup>(18)</sup> S.I. 1996/1919 (N.I. 16)

“family” means—

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

“the first contribution condition” means the condition set out in paragraph 1(1) of Schedule 1 to the Act;

“full-time student” has the meaning given by regulation 131;

“the Fund” means monies 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 the Secretary of State on 24th April 1992 or, in Scotland, on 10th April 1992;

“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(19);

“health care professional” means—

- (a) a registered medical practitioner;
- (b) a registered nurse; or
- (c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Act 1999(20);

“the Health and Personal Social Services Order” means the Health and Personal Social Services (Northern Ireland) Order 1972(21);

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

“Health and Social Services Trust” means a Trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(22), 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(23);

“housing association” has the meaning given by Article 3 of the Housing (Northern Ireland) Order 1992(24);

“housing benefit expenditure” means expenditure in respect of which housing benefit is payable as specified in regulation 13(1) of the Housing Benefit Regulations but does not include any such expenditure in respect of which an additional amount is applicable under regulation 67(1)(c) or 68(1)(d) (housing costs);

“the Housing Benefit Regulations” means the Housing Benefit Regulations (Northern Ireland) 2006(25);

“the Immigration and Asylum Act” means the Immigration and Asylum Act 1999(26);

“income-related benefit” means any of the benefits listed in section 122(1) of the Contributions and Benefits Act(27);

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(19) S.I. 2005/439

(20) 1999 c. 8

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

(22) S.I. 1991/194 (N.I. 1)

(23) S.I. 1994/429 (N.I. 2)

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

(25) S.R. 2006 No. 405

(26) 1999 c. 33

(27) Section 122(1) was amended by Schedule 6 to Tax Credits Act 2002 (c. 21)

“the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987<sup>(28)</sup>;

“independent hospital” has the meaning given by Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003<sup>(29)</sup>;

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

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations (Northern Ireland) 1996<sup>(30)</sup>;

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

“limited capability for work assessment” means the assessment of whether a person has limited capability for work set out in regulation 19(2) and Schedule 2;

“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;

“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;

“main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2)(b) of the Act;

“mariner” means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or her crew or any passengers or cargo or mail carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage,

but does not include a person who is in employment as a member of Her Majesty’s forces;

“the maternity allowance period” has the meaning given by section 35(2) of the Contributions and Benefits Act;

“medical evidence” means—

<sup>(28)</sup> S.R. 1987 No. 459

<sup>(29)</sup> S.I. 2003/431 (N.I. 9)

<sup>(30)</sup> S.R. 1996 No. 198

- (a) evidence from a health care professional approved by the Department; and
- (b) evidence (if any) from any health care professional or a hospital or similar institution, or such part of such evidence as constitutes the most reliable evidence available in the circumstances;

“the Medical Evidence Regulations” means the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976**(31)**;

“medical examination centre” means premises which are equipped and suitable for conducting a medical examination;

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly;

“member of Her Majesty’s forces” means a person, other than one mentioned in Part 2 of Schedule 1 who is—

- (a) over 16 years of age; and
- (b) a member of an establishment or organisation specified in Part 1 of that Schedule who gives full pay service,

but does not include any such person while absent on desertion;

“the Mental Health Order” means the Mental Health (Northern Ireland) Order 1986**(32)**;

“mobility supplement” means any supplement under Article 20 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006**(33)** including such a supplement by virtue of any other scheme or order or under Article 25A of the Personal Injuries (Civilians) Scheme 1983**(34)**;

“net earnings” means such earnings as are calculated in accordance with regulation 96;

“net profit” means such profit as is calculated in accordance with regulation 98;

“non-dependant” has the meaning given by regulation 71;

“non-dependant deduction” means a deduction that is to be made under regulation 67(1)(c) (prescribed amounts) and paragraph 19 of Schedule 6 (housing costs);

“nursing home” has the meaning given by Article 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“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;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993**(35)**

“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;

“partner” means where a claimant—

- (a) is a member of a couple, the other member of that couple;

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**(31)** S.R. 1976 No. 175

**(32)** S.I. 1986/595 (N.I. 4)

**(33)** S.I. 2006/606

**(34)** S.I. 1983/686; Article 25A was inserted by article 3 of S.I. 1983/1164 and amended by article 4 of S.I. 1991/708

**(35)** 1993 c. 49; the definition “occupational pension scheme” was substituted by Article 216(3) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005 No. 255 (N.I. 1)) and amended by regulation 2(2) of S.R. 2007 No. 457

- (b) is a husband or wife by virtue of a polygamous marriage, the other party to the marriage or any spouse additional to either party to the marriage;

“passenger” means any person carried on a ship except—

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship; or
- (b) a person on board the ship either in pursuance of the obligation to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled;

“payment” includes a part of a payment;

“pay period” means the period in respect of which a claimant is, or expects to be, normally paid by the claimant’s employer, being a week, a fortnight, 4 weeks, a month or other shorter or longer period as the case may be;

“pension fund holder” means in relation to a personal pension scheme or an occupational pension scheme, the trustees, managers or scheme administrators, as the case may be, of the scheme concerned;

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995<sup>(36)</sup>;

“period of limited capability for work” means a period throughout which a person has, or is treated as having, limited capability for work;

“period of study” means the period beginning with the date on which a person starts attending or undertaking a course of study and ending with the last day of the course or such earlier date (if any) as that person finally abandons it or is dismissed from it;

“personal pension scheme” means—

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes (Northern Ireland) Act 1993<sup>(37)</sup>;
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Taxes Act or a substituted contract within the meaning of section 622(3) of that Act which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004<sup>(38)</sup>;
- (c) a personal pension scheme approved under Chapter 4 of Part 14 of the Taxes Act which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;

“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 entered into under a law which permits polygamy where—

- (a) either party has for the time being any spouse additional to the other party; and
- (b) the claimant, the other party to the marriage and the additional spouse are members of the same household;

<sup>(36)</sup> S.I. 1995/3213 (N.I. 22); paragraph 1 was amended by paragraph 28 of Schedule 2 to the [State Pension Credit Act \(Northern Ireland\) 2002 \(c.14 \(N.I.\)\)](#) and paragraph 4 of Schedule 3 to the [Pensions Act \(Northern Ireland\) 2008 \(c.1 \(N.I.\)\)](#)

<sup>(37)</sup> The definition of “personal pension scheme” was substituted by Article 216(3) of the Pensions (Northern Ireland) Order 2005

<sup>(38)</sup> 2004 c. 12

“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;

“qualifying remunerative work” has the meaning given by Part 1 of the Tax Credits Act;

“qualifying young person” has the meaning given by section 138(2) of the Contributions and Benefits Act(39);

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

“relevant disease” means an infectious disease to which—

- (a) section 15(1) of the Public Health Act (Northern Ireland) 1967(40) (power to require person in contact with infectious disease to discontinue employment and compensation therefor) applies;
- (b) regulations 8 and 9 of the Public Health (Aircraft) Regulations (Northern Ireland) 1971(41) (examination, etc., of persons on aircraft and powers in respect of persons leaving aircraft) apply; or
- (c) regulations 9 and 10 of the Public Health (Ships) Regulations (Northern Ireland) 1971(42) (examination, etc., of persons on ships and powers in respect of certain persons on ships) apply;

“remunerative work”, except in relation to Schedules 6 and 7, has the meaning given by regulations 41 and 42;

“residential care home” has the meaning given by Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“the second contribution condition” means the condition set out in paragraph 2(1) of Schedule 1 to the 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 under section 1 of the Employment and Training Act(43);

“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(44) out of sums allocated to it for distribution under that section;

“the starting rate”, where it relates to the rate of tax, has the meaning given by section 989 of the Income Tax Act 2007(45);

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(39) Section 138 was substituted by section 2(2) of the Child Benefit Act 2005 (c. 6)

(40) 1967 c. 36: section 15(1) was amended by paragraph 75(c) of Schedule 16 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) and Article 32 (1) and (2) (c) of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1))

(41) S.R. 1971 No. 182

(42) S.R. 1971 No. 183

(43) 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))

(44) 1993 c. 39

(45) 2007 c. 3

“the Students Awards Regulations” means the Student Awards Regulations (Northern Ireland) 2003<sup>(46)</sup>;

“the Tax Credits Act” means the Tax Credits Act 2002<sup>(47)</sup>;

“the Taxes Act” means the Income and Corporation Taxes Act 1988<sup>(48)</sup>;

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

“terminally ill”, in relation to a claimant, means the claimant is suffering from a progressive disease and death in consequence of that disease can reasonably be expected within 6 months;

“training” means—

- (a) training in pursuance of arrangements made under section 1 or 3 of the Employment and Training Act; or
- (b) any training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills;

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a government department or by or on behalf of the Department for Employment and Learning;
- (b) to a person for that person’s maintenance or in respect of a member of that person’s family; and
- (c) for the period, or part of the period, during which the person 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 that person 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 that person is following a course of full-time education, other than under provision or arrangements under sections 2 and 3 of the Disabled Persons (Employment) Act<sup>(49)</sup> or section 1(1) of the Employment and Training 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 disablement pension” means any retirement pay, pension or allowance granted in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003<sup>(50)</sup>;

“war widow’s pension” means a pension payable to a woman as a widow under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;

“war widower’s pension” means a pension payable to a man as a widower or to a surviving civil partner under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;

<sup>(46)</sup> S.R. 2003 No. 459

<sup>(47)</sup> 2002 c. 21

<sup>(48)</sup> 1988 c. 1

<sup>(49)</sup> 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 \(N.I. 3\)\)](#)

<sup>(50)</sup> 2003 c. 1

“water charges” means any water and sewerage charges under Chapter 1 of Part 7 of the Water and Sewerage Services (Northern Ireland) Order 2006<sup>(51)</sup> in so far as such charges are in respect of the dwelling occupied as the home;

“week”, except in relation to regulation 26, means a period of 7 days;

“work or training beneficiary” has the meaning given by regulation 148;

“working day” means any day except for a Saturday, Sunday, Christmas Day, Good Friday or bank holiday under the Banking and Financial Dealings Act 1971<sup>(52)</sup>;

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

“young person” is a person who, except where section 6 of the Children (Leaving Care) Act (Northern Ireland) 2002<sup>(53)</sup> (exclusion from benefits) applies, falls within the definition of qualifying young person in section 138 of the Contributions and Benefits Act.

(2) In Chapter 9 of Part 10 (income and capital: child support) and paragraph 15(2) of Schedule 6 (housing costs: linking rule)—

“the 1991 Order” means the Child Support (Northern Ireland) Order 1991<sup>(54)</sup>;

“child support maintenance” means such periodical payments as are referred to in Article 4(6) of the 1991 Order and includes any payments made by the Department in lieu of such payments;

“maintenance assessment” has the meaning given by Article 2 of the 1991 Order as it has effect apart from the 2000 Act;

“maintenance calculation” has the meaning given by Article 2 of the 1991 Order<sup>(55)</sup> as amended by the 2000 Act.

(3) Any reference to the claimant’s family is to be construed as if it included in relation to a polygamous marriage a reference to any partner and any child or young person who is a member of the claimant’s household.

(4) For the purposes of paragraph 5 of Schedule 1 to the Act, “week” means a period of 7 days.

(5) The Interpretation Act (Northern Ireland) 1954<sup>(56)</sup> applies to these Regulations as it applies to an Act of the Assembly.

### **Rounding of fractions**

3. For the purposes of these Regulations—

(a) where any calculation under these Regulations results in a fraction of a penny that fraction is, if it would be to the claimant’s advantage, to be treated as a penny, otherwise it must be disregarded;

(b) where an employment and support allowance is awarded for a period which is not a complete benefit week and the applicable amount in respect of the period results in an amount which includes a fraction of a penny that fraction is to be treated as a penny.

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<sup>(51)</sup> S.I. 2006/3336 (N.I. 21)

<sup>(52)</sup> 1971 c. 80

<sup>(53)</sup> 2002 c. 11 (N.I.)

<sup>(54)</sup> S.I. 1991/2628 (N.I. 23)

<sup>(55)</sup> The definition of “maintenance calculation” was inserted by paragraph 12(e) of Schedule 3 to the [Child Support, Pensions and Social Security Act \(Northern Ireland\) 2000 \(c. 4 \(N.I.\)\)](#)

<sup>(56)</sup> 1954 c. 33 (N.I.)

## PART 2

### THE ASSESSMENT PHASE

#### **The end of the assessment phase**

4.—(1) Subject to paragraph (2) and regulations 5 and 6, the assessment phase in relation to a claimant ends on the last day of a period of 13 weeks beginning on the first day of the assessment phase as determined under section 24(2)(a) of the Act.

(2) If at the end of the period of 13 weeks referred to in paragraph (1), it has not yet been determined whether the claimant has limited capability for work—

- (a) the claimant having been assessed in accordance with a limited capability for work assessment; or
- (b) as a result of the claimant being treated as having limited capability for work in accordance with regulation 20, 25, 26, 29 or 33(2),

the assessment phase shall end when the limited capability for work determination is made.

#### **The assessment phase – previous claimants**

5.—(1) Where the circumstances in paragraph (2) apply in relation to a claimant the assessment phase—

- (a) begins on the first day of the period for which the claimant was previously entitled to an employment and support allowance; and
- (b) subject to paragraph (3) and regulation 6, ends on the day when the sum of the period for which the claimant was previously entitled to an employment and support allowance and the period for which the claimant is currently entitled to such an allowance is 13 weeks.

(2) The circumstances are that—

- (a)
  - (i) the claimant's current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1) or (2),
  - (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work, and
  - (iii) the assessment phase had not ended in the previous period for which the claimant was entitled to an employment and support allowance; or
- (b)
  - (i) regulation 145(3) or (5) applies to the claimant, and
  - (ii) the assessment phase had not ended in the previous period for which the claimant was entitled to an employment and support allowance.

(3) If, on the day referred to in paragraph (1)(b), it has not yet been determined whether the claimant has limited capability for work—

- (a) the claimant having been assessed in accordance with a limited capability for work assessment; or
- (b) as a result of the claimant being treated as having limited capability for work in accordance with regulation 20, 25, 26, 29 or 33(2),

the assessment phase will end when the limited capability for work determination is made.

### **The assessment phase – claimants appealing against a decision**

6. Where the period for which the claimant is entitled to an employment and support allowance commences and the claimant has made and is pursuing an appeal against a decision which embodies a determination that that claimant does not have limited capability for work, the assessment phase in relation to that claimant ends when the appeal is determined by an appeal tribunal constituted under Chapter 1 of Part 2 of the 1998 Order.

### **Circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply**

7.—(1) Subject to paragraph (2), sections 2(2)(a) and (3)(a) and 4(4)(a) and (5)(a) of the Act do not apply where—

- (a) a claimant is terminally ill and has either—
  - (i) made a claim expressly on the ground of being terminally ill, or
  - (ii) made an application for supersession or revision in accordance with the Decisions and Appeals Regulations which contains an express statement that the claimant is terminally ill; or
- (b)
  - (i) a period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1) or (2),
  - (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work, and
  - (iii) the assessment phase had ended in the previous period for which the claimant was entitled to an employment and support allowance.

(2) Paragraph (1)(b) does not apply where the claimant is appealing a decision which embodies a determination that the claimant does not have limited capability for work.

## **PART 3**

### **CONDITIONS OF ENTITLEMENT – CONTRIBUTORY ALLOWANCE**

#### **Relaxation of the first contribution condition**

8.—(1) A claimant who satisfies any of the conditions in paragraph (2) is to be taken to satisfy the first contribution condition if—

- (a) the claimant paid Class 1 or Class 2 contributions before the relevant benefit week in respect of any one tax year; and
  - (b) the earnings factor is derived—
    - (i) from earnings, on which primary Class 1 contributions have been paid or treated as paid, which are not less than that year's lower earnings limit multiplied by 25, or
    - (ii) from Class 2 contributions multiplied by 25.
- (2) The conditions referred to in paragraph (1) are that the claimant—
- (a) was entitled to a carer's allowance in the last complete tax year immediately preceding the relevant benefit year;
  - (b) had been engaged in qualifying remunerative work for a period of more than 2 years immediately before the first day of the period of limited capability for work and who was entitled to working tax credit where the disability element or the severe disability element

- of working tax credit specified in regulation 20(1)(b) or (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002<sup>(57)</sup> was included in the award;
- (c) in respect of any week in any tax year preceding the relevant benefit year—
- (i) is entitled to be credited with earnings or contributions in accordance with regulation 9D of the Social Security (Credits) Regulations (Northern Ireland) 1975<sup>(58)</sup> (credits for certain periods of imprisonment or detention in legal custody), or
  - (ii) would have been so entitled had an application to the Department been made for the purpose of that regulation; or
- (d) on the first day of the period of limited capability for work, had received a contributory allowance in the last complete tax year immediately preceding the relevant benefit year in which entitlement to a contributory allowance is now being decided.

### **Condition relating to youth – claimants aged 20 or over but under 25**

9.—(1) For the purposes of paragraph 4(1)(a) of Schedule 1 to the Act, a claimant who satisfies the conditions specified in paragraph (2) falls within a prescribed case.

- (2) The conditions are that the claimant—
- (a) registered on a course of—
    - (i) full-time advanced or secondary education, or
    - (ii) training,
 at least 3 months before attaining the age of 20; and
  - (b) not more than one academic term immediately after registration attended one or more such courses in respect of a period referred to in paragraph (3).
- (3) The period mentioned in sub-paragraph (2)(b) is a period which—
- (a) began on or before a day at least 3 months before the day the claimant attained the age of 20; and
  - (b) ended no earlier than the beginning of the last 2 complete tax years before the relevant benefit year which would have applied if the claimant was entitled to an employment and support allowance having satisfied the first contribution condition and the second contribution condition.
- (4) For the purposes of this regulation a claimant is to be treated as attending a course on any day on which the course is interrupted by an illness or domestic emergency.
- (5) In this regulation—
- “advanced education” means education for the purposes of—
- (a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business and Technician Education Council or the Scottish Qualifications Authority, or a teaching qualification; or
  - (b) any other course which is of a standard above ordinary national diploma, a diploma of the Business and Technical Education Council or a higher or advanced higher national certificate of the Scottish Qualifications Authority or a general certificate of education (advanced level);
- “full-time” includes part-time where the person’s disability prevents attendance at a full-time course;

<sup>(57)</sup> S.I. 2002/2005

<sup>(58)</sup> S.R. 1975 No. 113; regulation 9D was inserted by regulation 2 of S.R. 2001 No. 88

“secondary education” means a course of education below a course of advanced education—

- (a) by attendance at an establishment recognised by the Department as being, or as comparable to, a university, college or school; or
- (b) elsewhere where the Department is satisfied that the education is equivalent to that given in an establishment recognised as being, or as comparable to, a university, college or school.

#### **Condition relating to youth – previous claimants**

**10.**—(1) Paragraph 4(1)(a) of Schedule 1 to the Act does not apply to a claimant—

- (a) who has previously ceased to be entitled to an employment and support allowance, entitlement for which was as a result of satisfying the condition set out in sub-paragraph (1) of that paragraph;
- (b) whose previous entitlement had not been ended by a decision which embodied a determination (other than a determination in the circumstances applicable to a claimant under paragraph (2)(a)) that the claimant did not have limited capability for work;
- (c) in relation to whom regulation 145 (linking rules) does not apply;
- (d) aged 20 or over or, where regulation 9 would otherwise apply to the person, aged 25 or over; and
- (e) to whom paragraph (2) applies.

(2) This paragraph applies to a claimant—

- (a) whose previous entitlement to an employment and support allowance ended solely with a view to that person taking up employment or training;
- (b) whose earnings factor from an employment or series of employments pursued in the period from the end of the previous entitlement to the beginning of the period of limited capability for work, was below the lower earnings limit multiplied by 25 in any of the last 3 complete tax years before the beginning of the relevant benefit year; and
- (c) who—
  - (i) in respect of the last 2 complete tax years before the beginning of the relevant benefit year has either paid or been credited with earnings equivalent in each of those years to the year’s lower earnings limit multiplied by 50, of which at least one, in the last tax year, was in respect of the disability element or severe disability element of working tax credit, or
  - (ii) makes a claim for an employment and support allowance within a period of 12 weeks after the day on which the last such employment pursued in accordance with sub-paragraph (b) ceased.

#### **Condition relating to youth – residence or presence**

**11.**—(1) The prescribed conditions for the purposes of paragraph 4(1)(c) of Schedule 1 to the Act as to residence or presence in Northern Ireland are that the claimant—

- (a) is ordinarily resident in Northern Ireland;
- (b) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act or is a person to whom paragraph (3) applies;
- (c) is present in Northern Ireland; and
- (d) has been present in Northern Ireland for a period of, or for periods amounting in aggregate to, not less than 26 weeks in the 52 weeks immediately preceding the relevant benefit week.

(2) For the purposes of paragraph (1), a claimant is to be treated as being resident and present in Northern Ireland where the claimant is absent from Northern Ireland by reason only of being—

- (a) the spouse, civil partner, son, daughter, father, father-in-law, mother or mother-in-law of, and living with, a member of Her Majesty's forces who is abroad in that capacity;
- (b) in employment prescribed for the purposes of paragraph 7(1)(c) of Schedule 2 to the Welfare Reform Act 2007<sup>(59)</sup> in connection with continental shelf operations; or
- (c) abroad in the capacity of being an aircraft worker or mariner.

(3) This paragraph applies where a person is—

- (a) a member of a family of a national of an European Economic Area state;
- (b) a person who is lawfully working in Northern Ireland and is a national of a State with which the Community has concluded an agreement under Article 310 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families;
- (c) a person who is a member of a family of, and living with, a person specified in subparagraph (b); or
- (d) a person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person pursuant to the immigration rules within the meaning of the Immigration Act 1971<sup>(60)</sup> to be responsible for that person's maintenance and accommodation.

(4) A person is to be treated as having satisfied the residence or presence conditions in paragraph (1) throughout a period of limited capability for work where those conditions are satisfied on the first day of that period of limited capability for work.

#### **Condition relating to youth – full-time education**

**12.**—(1) For the purposes of paragraph 4(4) of Schedule 1 to the Act, a claimant is to be treated as receiving full-time education for any period during which the claimant—

- (a) is at least 16 years old but under the age of 19; and
- (b) attends a course of education for 21 hours or more a week.

(2) For the purposes of paragraph (1)(b), in calculating the number of hours a week during which a claimant attends a course, no account is to be taken of any instruction or tuition which is not suitable for persons of the same age who do not have a disability.

(3) In determining the duration of a period of full-time education under paragraph (1) any temporary interruption of that education may be disregarded.

(4) A claimant who is 19 years of age or over is not to be treated for the purposes of paragraph 4(1)(b) of Schedule 1 to the Act as receiving full-time education.

#### **Modification of the relevant benefit year**

**13.**—(1) Where paragraph (2) applies, paragraph 3(1)(f) of Schedule 1 to the Act has effect as if “relevant benefit year” is the benefit year which includes the day which would be the beginning of the period of limited capability for work if regulation 145 did not apply.

(2) This paragraph applies where a claimant does not satisfy—

<sup>(59)</sup> 2007 c. 5

<sup>(60)</sup> 1971 c. 77

- (a) the first contribution condition;
- (b) the second contribution condition; or
- (c) both contribution conditions,

but would satisfy those conditions if the modified definition of “relevant benefit year” in paragraph (1) applied.

## PART 4

### CONDITIONS OF ENTITLEMENT – INCOME-RELATED ALLOWANCE

#### Meaning of education

**14.**—(1) Subject to regulations 15 and 16, for the purposes of paragraph 6 of Schedule 1 to the Act, “education” means a course of study to which paragraph (2) applies which is being undertaken at an educational establishment.

(2) This paragraph applies to a course of study which is—

- (a) a full-time course of study, whether or not a grant is made for attending or undertaking it; or
- (b) a sandwich course within the meaning of regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007<sup>(61)</sup>, regulation 2(9) of the Education (Student Support) Regulations 2008<sup>(62)</sup> or regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007<sup>(63)</sup>.

#### Claimants to be treated as receiving education

**15.** Subject to regulation 18, a qualifying young person is to be treated as receiving education for the purposes of paragraph 6(1)(g) of Schedule 1 to the Act.

#### Claimants not to be treated as receiving education

**16.** Where a claimant is under 19 but not a qualifying young person, that claimant is not to be treated as receiving education where the course of study is not—

- (a) a course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education or a higher national diploma; or
- (b) any other course which is of a standard above advanced GNVQ or equivalent, including a course which is of a standard above a general certificate of education (advanced level) or above a Scottish national qualification (higher or advanced higher).

#### Course of study

**17.**—(1) For the purposes of the definition of “education” in regulation 14, a person is to be regarded as undertaking a course of study—

- (a) subject to paragraph (2), in the case of a person undertaking a part of a modular course that would be a course of study for the purposes of these Regulations, for the period beginning on the day on which that part of the course starts and ending—
  - (i) on the last day on which the person is registered with the educational establishment as attending or undertaking that part as a full-time course of study, or

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<sup>(61)</sup> S.R. 2007 No. 195

<sup>(62)</sup> S.I. 2008/529

<sup>(63)</sup> S.S.I. 2007/154

- (ii) on such earlier date (if any) as the person finally abandons the course or is dismissed from it;
  - (b) in any other case, throughout the period beginning on the date on which the person starts undertaking the course and ending on the last day of the course or on such earlier date (if any) as the person finally abandons it or is dismissed from it.
- (2) For the purpose of sub-paragraph (a) of paragraph (1), the period referred to in that sub-paragraph includes—
- (a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the person was attending or undertaking a part of the course as a course of study, any period in respect of which the person 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 the person is required to attend or undertake the course.
- (3) In paragraph (1), “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.

**Circumstances in which the condition that the claimant is not receiving education does not apply**

**18.** Paragraph 6(1)(g) of Schedule 1 to the Act does not apply where the claimant is entitled to a disability living allowance.

## PART 5

### LIMITED CAPABILITY FOR WORK

**Determination of limited capability for work**

**19.**—(1) For the purposes of Part 1 of the Act, whether a claimant’s capability for work is limited by the claimant’s physical or mental condition and, if it is, whether the limitation is such that it is not reasonable to require the claimant to work is to be determined on the basis of a limited capability for work assessment of the claimant in accordance with this Part.

(2) The limited capability for work assessment is an assessment of the extent to which a claimant who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in Schedule 2 or is incapable by reason of such disease or bodily or mental disablement of performing those activities.

(3) Subject to paragraph (6), for the purposes of Part 1 of the Act a claimant has limited capability for work if, by adding the points listed in column (3) of Schedule 2 against any descriptor listed in that Schedule, the claimant obtains a total score of at least—

- (a) 15 points whether singly or by a combination of descriptors specified in Part 1 of that Schedule;
- (b) 15 points whether singly or by a combination of descriptors specified in Part 2 of that Schedule; or
- (c) 15 points by a combination of descriptors specified in Parts 1 and 2 of that Schedule.

(4) In assessing the extent of a claimant's capability to perform any activity listed in Part 1 of Schedule 2, the claimant is to be assessed as if wearing any prosthesis with which the claimant is fitted or, as the case may be, wearing or using any aid or appliance which is normally worn or used.

(5) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 2, it is a condition that the claimant's incapability to perform the activity arises from—

- (a) a specific bodily disease or disablement;
- (b) a specific mental illness or disablement; or
- (c) as a direct result of treatment provided by a registered medical practitioner for such a disease, illness or disablement.

(6) Where more than one descriptor specified for an activity apply to a claimant, only the descriptor with the highest score in respect of each activity which applies is to be counted.

(7) Where a claimant—

- (a) has been determined to have limited capability for work; or
- (b) is to be treated as having limited capability for work in accordance with regulation 20, 25, 26, 29 or 33(2),

the Department may, if paragraph (8) applies, determine afresh whether the claimant has or is to be treated as having limited capability for work.

(8) This paragraph applies where—

- (a) the Department wishes to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition;
- (b) the Department wishes to determine whether the previous determination of limited capability for work or that the claimant is to be treated as having limited capability for work, was made in ignorance of, or was based on a mistake as to, some material fact; or
- (c) at least 3 months have passed since the date on which the claimant was determined to have limited capability for work or to be treated as having limited capability for work.

### **Certain claimants to be treated as having limited capability for work**

**20.** A claimant is to be treated as having limited capability for work if—

- (a) the claimant is terminally ill;
- (b) the claimant is—
  - (i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy, or
  - (ii) recovering from that treatment and the Department is satisfied the claimant should be treated as having limited capability for work;
- (c) the claimant is—
  - (i) excluded or abstains from work, or from work of such a kind, pursuant to a request or notice in writing lawfully made under a statutory provision, or
  - (ii) otherwise prevented from working pursuant to a statutory provision, by reason of the claimant being a carrier, or having been in contact with a case, of a relevant disease;
- (d) in the case of a pregnant woman, there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work;
- (e) in the case of a pregnant woman, she—
  - (i) is within the maternity allowance period, and

- (ii) is entitled to a maternity allowance under section 35(1) of the Contributions and Benefits Act(64);
- (f) in the case of a pregnant woman whose expected or actual date of confinement has been certified in accordance with the Medical Evidence Regulations, on any day in the period—
  - (i) beginning with the first date of the 6th week before the expected week of her confinement or the actual date of her confinement, whichever is earlier, and
  - (ii) ending on the 14th day after the actual date of her confinement,
 if she would have no entitlement to a maternity allowance or statutory maternity pay were she to make a claim in respect of that period.

### **Information required for determining capability for work**

**21.**—(1) Subject to paragraphs (2) and (3), the information or evidence required to determine whether a claimant has limited capability for work is—

- (a) evidence of limited capability for work in accordance with the Medical Evidence Regulations (which prescribe the form of doctor’s statement or other evidence required in each case);
- (b) any information relating to a claimant’s capability to perform the activities referred to in Schedule 2 as may be requested in the form of a questionnaire; and
- (c) any such additional information as may be requested.

(2) Where the Department is satisfied that there is sufficient information to determine whether a claimant has limited capability for work without the information specified in paragraph (1)(b), that information shall not be required for the purposes of making the determination.

(3) Paragraph (1) does not apply in relation to a determination whether a claimant is to be treated as having limited capability for work in accordance with regulation 20, 25, 26 or 33(2).

### **Failure to provide information in relation to limited capability for work**

**22.**—(1) Where a claimant fails without good cause to comply with the request referred to in regulation 21(1)(b), that claimant is, subject to paragraph (2), to be treated as not having limited capability for work.

(2) Paragraph (1) does not apply unless—

- (a) at least 6 weeks have passed since the claimant was sent the first request for the information; and
- (b) the claimant was sent a further request at least 4 weeks after the date of the first request, and at least 2 weeks have passed since the further request was sent.

### **Claimant may be called for a medical examination to determine whether the claimant has limited capability for work**

**23.**—(1) Where it falls to be determined whether a claimant has limited capability for work, that claimant may be called by or on behalf of a health care professional approved by the Department to attend for a medical examination.

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(64) Subsection (1) was substituted by Article 50(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and amended by paragraph 2(a) of Schedule 1 to the [Social Security Act \(Northern Ireland\) 2002](#) (c. 10 (N.I.))

(2) Subject to paragraph (3), where a claimant fails without good cause to attend for or to submit to an examination listed in paragraph (1), the claimant is to be treated as not having limited capability for work.

(3) Paragraph (2) does not apply unless written notice of the time and place for the examination was sent to the claimant at least 7 days in advance, or unless that claimant agreed to accept a shorter period of notice whether given in writing or otherwise.

#### **Matters to be taken into account in determining good cause in relation to regulation 22 or 23**

**24.** The matters to be taken into account in determining whether a claimant has good cause under regulation 22 or 23 include—

- (a) whether the claimant was outside Northern Ireland at the relevant time;
- (b) the claimant’s state of health at the relevant time; and
- (c) the nature of any disability the claimant has.

#### **Hospital in-patients**

**25.—**(1) A claimant is to be treated as having limited capability for work on any day on which that claimant is undergoing medical or other treatment as an in-patient in a hospital or similar institution, or which is a day of recovery from that treatment.

(2) For the purposes of this regulation, “day of recovery” means a day on which a claimant is recovering from treatment as an in-patient in a hospital or similar institution and the Department is satisfied that the claimant should be treated as having limited capability for work on that day.

#### **Claimants receiving certain regular treatment**

**26.—**(1) Subject to paragraph (2), a claimant receiving—

- (a) regular weekly treatment by way of haemodialysis for chronic renal failure;
- (b) treatment by way of plasmapheresis or by way of radiotherapy; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function,

is to be treated as having limited capability for work during any week in which that claimant is engaged in that treatment or has a day of recovery from that treatment.

(2) In the first week during which a claimant receives the treatment referred to in paragraph (1), that claimant is only to be treated as having limited capability for work during that week if, in that week the claimant undergoes no fewer than—

- (a) two days of treatment;
- (b) two days of recovery from any of the forms of treatment listed in paragraph (1); or
- (c) one day of treatment and one day of recovery from that treatment,

but the days of treatment or recovery from that treatment or both need not be consecutive.

(3) For the purpose of this regulation “day of recovery” means a day on which a claimant is recovering from any of the forms of treatment listed in paragraph (1) and the Department is satisfied that the claimant should be treated as having limited capability for work on that day.

**Claimant to be treated as having limited capability for work throughout a day**

27. A claimant who at the commencement of any day has, or thereafter develops, limited capability for work as determined in accordance with the limited capability for work assessment is to be treated as having limited capability for work throughout that day.

**Night workers**

28.—(1) Where a claimant works for a continuous period which extends over midnight into the following day, that claimant is to be treated as having limited capability for work on the day on which the lesser part of that period falls if that claimant had limited capability for work for the remainder of that day.

(2) Where, in relation to a period referred to in paragraph (1), the number of hours worked before and after midnight is equal—

- (a) if the days in question fall at the beginning of a period of limited capability for work, the claimant is to be treated as having limited capability on the second day; and
- (b) if the days in question fall at the end of a period of limited capability for work, the claimant is to be treated as having limited capability for work on the first day.

**Exceptional circumstances**

29.—(1) A claimant who does not have limited capability for work as determined in accordance with the limited capability for work assessment is to be treated as having limited capability for work if paragraph (2) applies to the claimant.

(2) This paragraph applies if—

- (a) the claimant is suffering from a life threatening disease in relation to which—
  - (i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure; and
  - (ii) in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure; or
- (b) the claimant suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work.

**Conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made**

30.—(1) A claimant is, if the conditions set out in paragraph (2) are met, to be treated as having limited capability for work until such time as it is determined—

- (a) whether or not the claimant has limited capability for work;
- (b) whether or not the claimant is to be treated as having limited capability for work otherwise than in accordance with this regulation; or
- (c) whether the claimant is to be treated as not having limited capability for work in accordance with regulation 22 or 23.

(2) The conditions are—

- (a) that the claimant provides evidence of limited capability for work in accordance with the Medical Evidence Regulations; and

(b) that it has not, within the 6 months preceding the date of claim, been determined, in relation to the claimant's entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, that the claimant does not have limited capability for work or is to be treated as not having limited capability for work in accordance with regulation 22 or 23 unless—

- (i) the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination,
- (ii) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened, or
- (iii) in the case of a claimant who was treated as not having limited capability for work in accordance with regulation 22, the claimant has since provided the information requested under that regulation.

(3) Paragraph (2)(b) does not apply where a claimant has made and is pursuing an appeal against a decision that embodies a determination that the claimant does not have limited capability for work and that appeal has not yet been determined by an appeal tribunal constituted under Chapter 1 of Part 2 of the 1998 Order.

**Claimant who claims jobseeker's allowance to be treated as not having limited capability for work**

**31.**—(1) A claimant who—

- (a) claims a jobseeker's allowance; and
- (b) is able to show a reasonable prospect of obtaining employment,

is, throughout the period of that claim, to be treated as not having limited capability for work.

(2) Paragraph (1) applies even though it has been determined that the claimant—

- (a) has limited capability for work; or
- (b) is to be treated as having limited capability for work in accordance with regulation 20, 25, 26 or 29.

**Certain claimants to be treated as not having limited capability for work**

**32.** A claimant is to be treated as not having limited capability for work on any day which is recorded by the Secretary of State for Defence as a day of sickness absence from duty.

**Additional circumstances where claimants are to be treated as having limited capability for work**

**33.**—(1) For the purposes of paragraph 4(1)(d)(ii) of Schedule 1 to the Act, a claimant is to be treated as having limited capability for work on any day in respect of which that claimant is entitled to statutory sick pay.

(2) For the purposes of an income-related allowance, a claimant is to be treated as having limited capability for work where—

- (a) that claimant is not a qualifying young person;
- (b) that claimant is receiving education; and
- (c) in accordance with regulation 18, paragraph 6(1)(g) of Schedule 1 to the Act does not apply.

## PART 6

### LIMITED CAPABILITY FOR WORK-RELATED ACTIVITY

#### **Determination of limited capability for work-related activity**

**34.—**(1) For the purposes of Part 1 of the Act, where, by reason of a claimant's physical or mental condition, at least one of the descriptors set out in Schedule 3 applies to the claimant, the claimant's capability for work-related activity shall be limited and the limitation shall be such that it is not reasonable to require that claimant to undertake such activity.

(2) A descriptor applies to a claimant if that descriptor applies to the claimant for the majority of the time or, as the case may be, on the majority of the occasions on which the claimant undertakes or attempts to undertake the activity described by that descriptor.

(3) In determining whether a descriptor applies to a claimant, the claimant is to be assessed as if wearing any prosthesis with which the claimant is fitted or, as the case may be, wearing or using any aid or appliance which is normally worn or used by the claimant.

(4) Where a determination has been made about whether a claimant—

- (a) has limited capability for work-related activity;
- (b) is to be treated as having limited capability for work-related activity; or
- (c) is to be treated as not having limited capability for work-related activity,

the Department may, if paragraph (5) applies, determine afresh whether the claimant has or is to be treated as having limited capability for work-related activity.

(5) This paragraph applies where—

- (a) the Department wishes to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition;
- (b) the Department wishes to determine whether the previous determination about limited capability for work-related activity or about treating the claimant as having or as not having limited capability for work-related activity, was made in ignorance of, or was based on a mistake as to, some material fact; or
- (c) at least 3 months have passed since the date of the previous determination about limited capability for work-related activity or about treating the claimant as having or as not having limited capability for work-related activity.

#### **Certain claimants to be treated as having limited capability for work-related activity**

**35.—**(1) A claimant is to be treated as having limited capability for work-related activity if—

- (a) the claimant is terminally ill;
- (b) the claimant is—
  - (i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy, or
  - (ii) recovering from that treatment and the Department is satisfied that the claimant should be treated as having limited capability for work-related activity; or
- (c) in the case of a pregnant woman, there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work-related activity.

(2) A claimant who does not have limited capability for work-related activity as determined in accordance with regulation 34(1) is to be treated as having limited capability for work-related activity if—

- (a) the claimant suffers from some specific disease or bodily or mental disablement; and
- (b) by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work-related activity.

**Information required for determining capability for work-related activity**

**36.**—(1) Subject to paragraph (2), the information or evidence required to determine whether a claimant has limited capability for work-related activity is—

- (a) any information relating to the descriptors set out in Schedule 3 as may be requested in the form of a questionnaire; and
- (b) any such additional information as may be requested.

(2) Where the Department is satisfied that there is sufficient information to determine whether a claimant has limited capability for work-related activity without the information specified in paragraph (1)(a), that information shall not be required for the purposes of making the determination.

**Failure to provide information in relation to work-related activity**

**37.**—(1) Where a claimant fails without good cause to comply with the request referred to in regulation 36(1)(a), the claimant is, subject to paragraph (2), to be treated as not having limited capability for work-related activity.

(2) Paragraph (1) does not apply unless—

- (a) at least 6 weeks have passed since the claimant was sent the first request for the information; and
- (b) the claimant was sent a further request at least 4 weeks after the date of the first request, and at least 2 weeks have passed since the further request was sent.

**Claimant may be called for a medical examination to determine whether the claimant has limited capability for work-related activity**

**38.**—(1) Where it falls to be determined whether a claimant has limited capability for work-related activity, that claimant may be called by or on behalf of a health care professional approved by the Department to attend for a medical examination.

(2) Subject to paragraph (3), where a claimant fails without good cause to attend for or to submit to an examination referred to in paragraph (1), the claimant is to be treated as not having limited capability for work-related activity.

(3) Paragraph (2) does not apply unless written notice of the time and place for the examination was sent to the claimant at least 7 days in advance, or unless the claimant agreed to accept a shorter period of notice whether given in writing or otherwise.

**Matters to be taken into account in determining good cause in relation to regulation 37 or 38**

**39.** The matters to be taken into account in determining whether a claimant has good cause under regulation 37 or 38 include—

- (a) whether the claimant was outside Northern Ireland at the relevant time;
- (b) the claimant's state of health at the relevant time; and
- (c) the nature of any disability the claimant has.

## PART 7

EFFECT OF WORK ON ENTITLEMENT TO AN  
EMPLOYMENT AND SUPPORT ALLOWANCE**A claimant who works to be treated as not entitled to an employment and support allowance**

**40.**—(1) Subject to the following paragraphs, a claimant is to be treated as not entitled to an employment and support allowance in any week in which that claimant does work.

(2) Paragraph (1) does not apply to—

- (a) work as a councillor;
- (b) duties undertaken on either one full day or 2 half-days a week as—
  - (i) a member of the Disability Living Allowance Advisory Board, or
  - (ii) a panel member with a disability qualification, as defined in regulation 1(2) of the Decisions and Appeals Regulations, acting as a member of an appeal tribunal constituted under Chapter 1 of Part 2 of the 1998 Order;
- (c) domestic tasks carried out in the claimant’s own home or the care of a relative;
- (d) duties undertaken in caring for another person who is accommodated with the claimant by virtue of arrangements made under any of the provisions referred to in paragraph 27 or 28 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) where the claimant is in receipt of any payment specified in those paragraphs;
- (e) any activity the claimant undertakes during an emergency to protect another person or to prevent serious damage to property or livestock; or
- (f) any of the categories of work set out in regulation 45 (exempt work).

(3) This regulation is subject to regulation 46 (effect of work on entitlement to contributory allowance where claimant is receiving certain regular treatment).

(4) A claimant who does work to which this regulation applies in a week which is—

- (a) the week in which the claimant first becomes entitled to a benefit, allowance or advantage on account of the claimant’s limited capability for work in any period; or
- (b) the last week in any period in which the claimant has limited capability for work or is treated as having limited capability for work,

is to be treated as not entitled to an employment and support allowance by virtue of paragraph (1) only on the actual day or days in that week on which the claimant does that work.

(5) Regulation 145 (linking rules) does not apply for the purposes of calculating the beginning or end of any period of limited capability for work under paragraph (4).

(6) The day or days in a week on which a night worker works, for the purposes of paragraph (4), are to be calculated by reference to regulation 28 (night workers).

(7) In this regulation—

“week” means a week in respect of which a claimant is entitled to an employment and support allowance;

“work” means any work which a claimant does, whether or not that claimant undertakes it in expectation of payment;

“work as a councillor” is to be taken to include any work which a claimant undertakes as a member of a district council or any body of which the claimant is a member by reason of being a councillor.

**Meaning of “remunerative work” for the purposes of paragraph 6(1)(e) of Schedule 1 to the Act**

41.—(1) For the purposes of paragraph 6(1)(e) of Schedule 1 to the Act (conditions of entitlement to an income-related allowance), “remunerative work” means any work which a claimant does for which payment is made or which is done in expectation of payment, other than work listed in regulation 40(2).

(2) Subject to paragraph (3), a claimant who was, or who was being treated as—

(a) engaged in remunerative work; and

(b) in respect of that work earnings to which regulation 95(1)(b) and (d) applies are paid,

is to be treated as being engaged in remunerative work for the period for which those earnings are taken into account in accordance with Part 10.

(3) Paragraph (2) does not apply to earnings disregarded under paragraph 1 of Schedule 7 (sums to be disregarded in the calculation of earnings).

**Meaning of “remunerative work” for the purposes of paragraph 6(1)(f) of Schedule 1 to the Act**

42.—(1) For the purposes of paragraph 6(1)(f) of Schedule 1 to the Act, (conditions of entitlement to an income-related allowance where a claimant must not be a member of a couple the other member of which is engaged in remunerative work), “remunerative work” means work in which the claimant’s partner is engaged or, where the partner’s hours of work fluctuate, the partner is engaged on average, for not less than 24 hours a week, being work for which payment is made or which is done in expectation of payment.

(2) In calculating the number of hours for which a claimant’s partner is engaged in work so as to determine whether that partner is engaged in remunerative work, the number of hours are to be determined in accordance with paragraphs (8) and (9) of regulation 45 and those paragraphs are to be read as though they referred to the claimant’s partner.

(3) The claimant’s partner is to be treated as engaged in remunerative work during any period for which that partner 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.

(4) Subject to paragraph (5), a claimant’s partner who was, or who was being treated as—

(a) engaged in remunerative work; and

(b) in respect of that work earnings to which regulation 95(1)(b) and (d) applies are paid,

is to be treated as being engaged in remunerative work for the period for which those earnings are taken into account in accordance with Part 10.

(5) Paragraph (4) does not apply to earnings disregarded under paragraph 1 of Schedule 7 (sums to be disregarded in the calculation of earnings).

(6) For the purposes of this regulation, in determining the number of hours in which a claimant’s partner is engaged or treated as engaged in remunerative work, no account is to be taken of any hours in which the claimant’s partner is engaged in an employment or a scheme to which regulation 43(1) or (2) applies.

**Circumstances under which partners of claimants entitled to an income-related allowance are not to be treated as engaged in remunerative work**

43.—(1) A claimant’s partner is not to be treated as engaged in remunerative work in so far as—

(a) the partner is engaged in child minding in the partner’s home;

- (b) the partner is engaged by a charity or voluntary organisation, or is a volunteer, where the only payment received by the partner or due to be paid to the partner, is a payment which is to be disregarded under regulation 104(2) (calculation of income other than earnings) and paragraph 2 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings);
  - (c) the partner is engaged on a scheme for which a training allowance is being paid;
  - (d) the partner is receiving assistance under the self-employment route;
  - (e) the partner is engaged in employment as any one of the following—
    - (i) 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<sup>(65)</sup>,
    - (ii) an auxiliary coastguard in respect of coast rescue activities,
    - (iii) a person engaged part-time in the manning or launching of a lifeboat,
    - (iv) a member of any territorial or reserve force prescribed in Part 1 of Schedule 1;
  - (f) the partner is undertaking work as a councillor;
  - (g) the partner is engaged in caring for a person who is accommodated with the partner by virtue of arrangements made under any of the provisions referred to in paragraph 27 or 28 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) and the partner is in receipt of any payment specified in that paragraph; or
  - (h) the partner is engaged in an activity in respect of which—
    - (i) a sports award has been made, or is to be made, to the partner, and
    - (ii) no other payment is made or is expected to be made to the partner.
- (2) A claimant's partner is not to be treated as engaged in remunerative work, where the partner is—
- (a) a person who is mentally or physically disabled and by reason of that disability—
    - (i) the person's earnings are reduced to 75 per cent. or less of what a person without that disability and working the same number of hours would reasonably be expected to earn in that employment or in comparable employment in the area, or
    - (ii) the person's number of hours are 75 per cent. or less of what a person without that disability would reasonably be expected to undertake in that employment or in comparable employment in the area;
  - (b) subject to regulation 42(4) (partners treated as engaged in remunerative work), a person who would otherwise have satisfied section 125(1) of the Contributions and Benefits Act<sup>(66)</sup> (trade disputes) or in respect of whom section 123(1) of that Act<sup>(67)</sup> (conditions of entitlement to income support) would otherwise have had effect as modified by section 126(b) of that Act<sup>(68)</sup> (effect of return to work);

<sup>(65)</sup> S.I. 2006/1254 (N.I. 9)

<sup>(66)</sup> Section 125(1) was amended by paragraph 31 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I.12)) and paragraph 14 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))

<sup>(67)</sup> Section 123(1) was amended by paragraph 13 of Schedule 2 and Schedule 3 to the Jobseekers (Northern Ireland) Order 1995, paragraph 2 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)) and paragraph 96 of Schedule 24 to the Civil Partnership Act 2004 (c. 33)

<sup>(68)</sup> Section 126 was amended by paragraph 15 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 and paragraph 98 of Schedule 24 to the Civil Partnership Act 2004

- (c) a person who would otherwise satisfy the conditions set out in paragraph 4 of Schedule 1B to the Income Support Regulations<sup>(69)</sup>;
- (d) a person who—
  - (i) is in employment,
  - (ii) lives in, or is temporarily absent from, a residential care home, a nursing home, an Abbeyfield Home or an independent hospital, and
  - (iii) requires personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, past or present mental disorder or a terminal illness.

(3) The claimant's partner is not to be treated as engaged in remunerative work on any day on which that partner is on maternity leave, paternity leave or adoption leave or is absent from work because the partner is ill.

(4) In this regulation—

“work as a councillor” has the meaning given by regulation 40;

“volunteer” means a person who is engaged in voluntary work otherwise than for a relative, where the only payment received or due to be paid to the person by virtue of being so engaged is in respect of any expenses reasonably incurred by the person in connection with that work.

#### **Claimants who are treated as not entitled to any allowance at all by reason of regulation 40(1) are to be treated as not having limited capability for work**

44.—(1) Where a claimant is treated as not entitled to an employment and support allowance by reason of regulation 40(1), subject to paragraph (2), the claimant is to be treated as not having limited capability for work.

(2) Paragraph (1) does not apply where the claimant remains entitled to a contributory allowance, but is not entitled to an income-related allowance by reason of regulation 40(1).

(3) Paragraph (1) applies even if—

- (a) it has been determined that the claimant has, or is to be treated as having, limited capability for work in accordance with regulation 20, 25, 26 or 29; or
- (b) the claimant meets the conditions set out in regulation 30(2) for being treated as having limited capability for work until a determination is made in accordance with the limited capability for work assessment.

#### **Exempt work**

45.—(1) The categories of work referred to in regulation 40(2)(f) are set out in the following paragraphs.

(2) Work for which the earnings in any week do not exceed £20·00.

(3) Work for which the earnings in any week do not exceed £88·50 and which—

- (a) is part of the claimant's treatment programme and is done under medical supervision while the claimant is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution; or
- (b) is supervised by a person employed by a public authority or voluntary organisation engaged in the provision or procurement of work for persons who have disabilities.

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<sup>(69)</sup> Schedule 1B was inserted by regulation 22 of S.R. 1996 No. 199 and paragraph 4 was amended by regulation 33 of S.R. 1996 No. 358, regulation 4(1) of S.R. 2000 No. 74, regulation 3(3) of S.R. 2002 No. 80 and paragraph 1(g) of the Schedule to, S.R. 2002 No. 323 and regulation 3(3) of S.R. 2002 No. 80

(4) Work which is done for less than 16 hours a week, for which earnings in any week do not exceed £88.50 and which—

- (a) is done during a 52 week period beginning on the first day on which the work is done, provided that—
  - (i) the claimant has not previously done specified work,
  - (ii) since the beginning of the last period of specified work, the claimant has ceased to be entitled to a relevant benefit for a continuous period exceeding 12 weeks,
  - (iii) not less than 52 weeks have elapsed since the claimant previously did the specified work; or
- (b) is done by a claimant who has or is treated as having limited capability for work-related activity.

(5) Work done in the course of receiving assistance in pursuing self-employed earner's employment whilst participating in a programme provided or other arrangements made under section 1 of the Employment and Training Act(70).

- (6) Work done where the claimant receives no payment of earnings and where the claimant—
  - (a) is engaged by a charity or voluntary organisation; or
  - (b) is a volunteer,

where the Department is satisfied in any of those cases that it is reasonable for the claimant to provide the service free of charge.

(7) Work done in the course of participating in a work placement approved in writing by the Department for Employment and Learning (or a person providing services to that Department) before the placement starts.

- (8) The number of hours for which a claimant is engaged in work is to be determined—
  - (a) where no recognisable cycle has been established in respect of a claimant's work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which the claimant is expected to work in a week;
  - (b) where the number of hours for which the claimant is engaged fluctuate, by reference to the average of hours worked over—
    - (i) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences),
    - (ii) in any other case, the period of 5 weeks immediately before the date of claim or the date on which a superseding decision is made under Article 11 of the 1998 Order(71) (decisions superseding earlier decisions), or such other length of time as may, in the particular case, enable the claimant's average hours of work to be determined more accurately.

(9) For the purposes of determining the number of hours for which a claimant is engaged in work, that number is to include any time allowed to that claimant by the claimant's employer for a meal or for refreshment, but only where that claimant is, or expects to be, paid earnings in respect of that time.

(10) In this regulation—

“relevant benefit” means—

- (a) an employment and support allowance; or

(70) 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))

(71) Article 11 was amended by paragraph 17 of Schedule 6 and Schedule 9 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

(b) credits under regulations made under section 22(5) of the Contributions and Benefits Act(72),

in respect of which the question of the claimant's limited capability for work arises under the Act;

“specified work” means work done in accordance with paragraph (4);

“volunteer” has the meaning given by regulation 43;

“work placement” means practical work experience with an employer, which is neither paid nor undertaken in expectation of payment.

### **Effect of work on entitlement to contributory allowance where claimant is receiving certain regular treatment**

**46.** Where a claimant who is entitled to a contributory allowance and is treated as having limited capability for work in accordance with regulation 26 works on any day during a week when the claimant is, in accordance with that regulation, receiving certain regular treatment or recovering from that treatment, that work is to have no effect on the claimant's entitlement to the contributory allowance.

## **PART 8**

### **CONDITIONALITY**

#### **CHAPTER 1**

#### **Work-focused health-related assessment**

#### **Requirement to take part in a work-focused health-related assessment**

**47.—**(1) The Department may require a claimant who satisfies the requirements in paragraph (2) to take part in one or more work-focused health-related assessments as a condition of continuing to be entitled to the full amount of employment and support allowance payable to the claimant.

(2) The requirements referred to in paragraph (1) are that the claimant—

(a) is either—

(i) entitled to an employment and support allowance, or

(ii) a person who has made a claim for an employment and support allowance to which regulations under section 5(1)(c) of the Administration Act apply;

(b) is not a member of the support group; and

(c) has not reached the age at which a woman of the same age as the claimant would attain pensionable age.

(3) Any requirement to take part in a work-focused health-related assessment ceases to have effect if the claimant ceases to satisfy the requirements in paragraph (2).

#### **Work-focused health-related assessment**

**48.** For the purposes of section 11(7)(c) of the Act, matters to be assessed in the work-focused health-related assessment include—

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(72) Section 22(5) was amended by paragraph 5 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995

- (a) difficulties which are likely to be experienced as a result of the claimant's physical or mental condition in relation to obtaining or remaining in work and how these might be managed or alleviated; and
- (b) the claimant's views on the impact of the claimant's physical or mental condition in relation to obtaining or remaining in work and any aspirations in relation to work in the light of that condition.

#### **Notification of assessment**

**49.**—(1) The health care professional who is to carry out the work-focused health-related assessment, or a person acting on the health care professional's behalf, must notify the claimant of the requirement to attend the work-focused health-related assessment including details of the date, time and place of the assessment.

(2) Notification under paragraph (1) must be given in writing at least 7 days before the claimant is required to attend the work-focused health-related assessment unless the claimant agrees to accept a shorter period of notice whether given in writing or otherwise.

#### **Determination of the place of the work-focused health-related assessment**

**50.**—(1) Subject to paragraph (2), the work-focused health-related assessment must be carried out in a medical examination centre.

(2) A work-focused health-related assessment may take place at the claimant's home if the Department is of the opinion that requiring the claimant to attend elsewhere would cause the claimant undue inconvenience or endanger the claimant's health.

#### **Taking part in a work-focused health-related assessment**

**51.** A claimant is to be regarded as having taken part in a work-focused health-related assessment if the claimant—

- (a) attends for the assessment at the date, time and place notified in accordance with regulation 49;
- (b) provides all information which the Department requests as being necessary for the work-focused health-related assessment; and
- (c) participates in discussions to the extent the Department considers necessary for the work-focused health-related assessment.

#### **Deferral of requirement to take part in a work-focused health-related assessment**

**52.**—(1) Where—

- (a) a health care professional has conducted an assessment in relation to the claimant for the purpose of enabling the Department to determine whether the claimant has limited capability for work-related activity;
- (b) it appears to the health care professional that—
  - (i) at least one of the descriptors set out in Schedule 3 applies to the claimant, or
  - (ii) regulation 35 (certain claimants to be treated as having limited capability for work-related activity) applies to the claimant; and
- (c) the Department has not made a determination about whether the claimant has limited capability for work-related activity,

the requirement to take part in the work-focused health-related assessment does not apply until such time after the Department has made a determination in relation to the claimant's limited capability for work-related activity as the Department may decide.

(2) Where paragraph (1) applies, the health care professional must notify the claimant that the requirement to take part in the work-focused health-related assessment has been deferred, pending determination by the Department of the claimant's capability for work-related activity.

### **Failure to take part in a work-focused health-related assessment**

**53.**—(1) A claimant who is required to take part in a work-focused health-related assessment but fails to do so must show good cause for that failure within 5 working days of the date on which the Department gives notification of that failure.

(2) The Department must determine whether a claimant who is required to take part in a work-focused health-related assessment has failed to do so and, if so, whether the claimant has shown good cause for that failure in accordance with paragraph (1).

(3) In determining whether a claimant has shown good cause for the failure to take part in a work-focused health-related assessment, the Department must take the following matters into account—

- (a) whether the claimant was outside Northern Ireland at the time of the notification;
- (b) the claimant's state of health at the time of the work-focused health-related assessment;
- (c) the nature of any disability which the claimant has; and
- (d) any other matter which the Department considers appropriate.

## **CHAPTER 2**

### **Work-focused interviews**

#### **Requirement to take part in a work-focused interview**

**54.**—(1) The Department may require a claimant who satisfies the requirements in paragraph (2) to take part in one or more work-focused interviews as a condition of continuing to be entitled to the full amount of employment and support allowance payable to the claimant.

(2) The requirements referred to in paragraph (1) are that the claimant—

- (a) is either—
  - (i) entitled to an employment and support allowance, or
  - (ii) a person in respect of whom an award has been made under regulation 146(1) (advance awards);
- (b) is not a member of the support group;
- (c) has not reached the age at which a woman of the same age as the claimant would attain pensionable age; and
- (d) is not only entitled to a contributory allowance payable at a nil rate.

(3) Any requirement to take part in a work-focused interview ceases to have effect if the claimant ceases to satisfy the requirements in paragraph (2).

#### **Work-focused interview**

**55.** The purposes of a work-focused interview are any or all of the following—

- (a) assessing the claimant's prospects for remaining in or obtaining work;
- (b) assisting or encouraging the claimant to remain in or obtain work;

- (c) identifying activities that the claimant may undertake that will make remaining in or obtaining work more likely;
- (d) identifying training, educational or rehabilitation opportunities for the claimant which may make it more likely that the claimant will remain in or obtain work or be able to do so;
- (e) identifying current or future work opportunities, including self-employment opportunities, for the claimant, that are relevant to the claimant's needs and abilities.

#### **Notification of interview**

**56.**—(1) The Department must notify the claimant of the requirement to attend the work-focused interview including details of the date, time and place of the interview.

(2) A work-focused interview may take place at a claimant's home if it is determined that requiring the claimant to attend elsewhere would cause undue inconvenience to, or endanger the health of, the claimant.

(3) The notification referred to in paragraph (1) may be in writing or otherwise.

#### **Taking part in a work-focused interview**

**57.**—(1) A claimant is regarded as having taken part in a work-focused interview if the claimant—

- (a) attends for the interview at the place, date and time notified in accordance with regulation 56;
- (b) provides information, if requested by the Department, about any or all of the matters set out in paragraph (2);
- (c) participates in discussions to the extent the Department considers necessary, about any or all of the matters set out in paragraph (3);
- (d) assists the Department in the completion of an action plan.

(2) The matters referred to in paragraph (1)(b) are—

- (a) the claimant's educational qualifications and vocational training;
- (b) the claimant's work history;
- (c) the claimant's aspirations for future work;
- (d) the claimant's skills that are relevant to work;
- (e) the claimant's work-related abilities;
- (f) the claimant's caring or childcare responsibilities; and
- (g) any paid or unpaid work that the claimant is undertaking.

(3) The matters referred to in paragraph (1)(c) are—

- (a) any activity the claimant is willing to undertake which may make remaining in or obtaining work more likely;
- (b) any such activity that the claimant may have previously undertaken;
- (c) any progress the claimant may have made towards remaining in or obtaining work;
- (d) any work-focused health-related assessment the claimant may have taken part in; and
- (e) the claimant's opinion as to the extent to which the ability to remain in or obtain work is restricted by the claimant's physical or mental condition.

### **Action plan**

- 58.**—(1) An action plan is a document that is completed by the Department and contains—
- (a) a record of a work-focused interview;
  - (b) a record of any activity that the claimant is willing to take which may make remaining in or obtaining work more likely or which may make it more likely that the claimant will be able to do so;
  - (c) any other information that the Department considers to be appropriate.
- (2) An action plan must be in writing.
- (3) The Department must provide a claimant who attends a work-focused interview with an action plan.

### **Deferral of requirement to take part in a work-focused interview**

- 59.**—(1) A requirement to take part in a work-focused interview may be deferred or treated as having been deferred if at the time the work-focused interview is to take place, or was due to take place, such an interview would not at that time be or have been—
- (a) of assistance to the claimant; or
  - (b) appropriate in the circumstances.
- (2) A decision under paragraph (1) may be made at any time after the requirement to take part in the work-focused interview is imposed, including after the time that the work-focused interview was due to take place or took place.
- (3) Where a requirement to take part in a work-focused interview is deferred, or treated as having been deferred, then the time that the work-focused interview is to take place must be re-determined.

### **Requirement to take part in a work-focused interview not to apply**

- 60.** The Department may determine that a requirement on a claimant to take part in a work-focused interview is not to apply, or is to be treated as not having applied, if that interview would not be, or would not have been, of assistance because the claimant is, or was likely to be, starting or returning to work.

### **Failure to take part in a work-focused interview**

- 61.**—(1) A claimant who is required to take part in a work-focused interview but fails to do so must show good cause for that failure within 5 working days of the date on which the Department gives notification of that failure.
- (2) The Department must determine whether a claimant who is required to take part in a work-focused interview has failed to do so and, if so, whether the claimant has shown good cause for that failure in accordance with paragraph (1).
- (3) In determining whether a claimant has shown good cause for the failure to take part in a work-focused interview, the Department may take the following matters into account—
- (a) that the claimant misunderstood the requirement to take part in the work-focused interview due to learning, language or literacy difficulties or any misleading information given or sent by the Department;
  - (b) that the claimant had transport difficulties and that no reasonable alternative was available;
  - (c) that the claimant was attending an interview with an employer with a view to remaining in or obtaining work;
  - (d) that the claimant was pursuing employment opportunities as a self-employed earner;

- (e) that the claimant was attending a medical or dental appointment and that it would have been unreasonable in the circumstances to re-arrange the appointment;
- (f) that the claimant was accompanying another person for whom the claimant has caring responsibilities to a medical or dental appointment and that it would have been unreasonable for that other person to re-arrange the appointment;
- (g) that the claimant, a dependant or another person for whom the claimant provides care suffered an accident, sudden illness or relapse of a physical or mental condition;
- (h) that the claimant was attending the funeral of a relative or close friend on the day of the work-focused interview;
- (i) that the physical or mental condition of the claimant made it impossible to attend at the time and place fixed for the interview;
- (j) that the established customs and practices of the religion to which the claimant belongs prevented attendance on that day or at that time;
- (k) any other matter which the Department considers appropriate.

#### **Contracting out certain functions relating to work-focused interviews**

**62.**—(1) Any function of the Department specified in paragraph (2) may be exercised by, or by employees of, such person (if any) as may be authorised by the Department.

(2) The functions are any function under—

- (a) regulation 54(1) (requirement to take part in a work-focused interview);
- (b) regulation 56(1) and (2) (notification of interview);
- (c) regulation 57(1)(b) and (c) (taking part in a work-focused interview);
- (d) regulation 58(1) and (3) (action plan);
- (e) regulation 59(1) and (3) (deferral of requirement to take part in a work-focused interview);
- (f) regulation 60 (requirement to take part in a work-focused interview not to apply).

### CHAPTER 3

#### Reduction of employment and support allowance

#### **Reduction of employment and support allowance**

**63.**—(1) Where the Department has determined that a claimant who was required to take part in—

- (a) a work-focused health-related assessment; or
- (b) a work-focused interview,

has failed to do so and has failed to show good cause for that failure in accordance with regulation 53 or 61, as the case may be (“a failure determination”), the amount of the employment and support allowance payable to the claimant is to be reduced in accordance with this regulation.

(2) Subject to paragraph (3), the amount of the reduction in relation to each failure determination is—

- (a) 50 per cent. of the amount of the work-related activity component as set out in Part 4 of Schedule 4 for the first 4 benefit weeks to which, by virtue of Article 11(5) of the 1998 Order or regulations made under Article 11(6) of that Order the reduction applies; and
- (b) 100 per cent. of the amount of that component for each subsequent benefit week.

(3) In any benefit week, the amount of an employment and support allowance payable to a claimant is not, by virtue of this regulation, to be reduced—

- (a) below 10 pence;
- (b) in relation to more than—
  - (i) one failure determination relating to a work-focused health-related assessment, and
  - (ii) one failure determination relating to a work-focused interview; and
- (c) by more than 100 per cent. of the amount of the work-related activity component as set out in Part 4 of Schedule 4 in any circumstances.

(4) Where a claimant is entitled to both a contributory allowance and an income-related allowance, any reduction in the claimant's allowance must first be applied to the part of that allowance treated as attributable to the claimant's contributory allowance and only if there is any amount outstanding is it to be applied to the part of that allowance treated as attributable to the claimant's income-related allowance.

(5) For the purposes of determining the amount of any income-related allowance payable, a claimant is to be treated as receiving the amount of any contributory allowance which would have been payable but for any reduction made in accordance with this regulation.

#### **Cessation of reduction**

**64.**—(1) Any reduction imposed as a result of a failure determination which resulted from a failure to take part in a work-focused health-related assessment ceases to have effect if—

- (a) the claimant complies with a requirement to attend a work-focused health-related assessment; or
- (b) the claimant subsequently ceases to meet the requirements set out in regulation 47(2).

(2) Any reduction imposed as a result of a failure determination which resulted from a failure to take part in a work-focused interview ceases to have effect if—

- (a) the claimant complies with a requirement to attend a work-focused interview; or
- (b) the claimant subsequently ceases to meet the requirements set out in regulation 54(2).

### CHAPTER 4

#### Notification

#### **Notification under this Part**

**65.**—(1) Where written notification is to be given in accordance with this Part, such notification may be sent by post.

(2) Any notification sent by post is to be taken to have been received on the second working day after posting.

### CHAPTER 5

#### Modification of the Act in relation to claims to which section 5(1)(c) of the Administration Act applies

#### **Modifications of the Act**

**66.** Where a person has made a claim for an employment and support allowance to which section 5(1)(c) of the Administration Act applies, the Act applies as if—

- (a) in section 11(1)—
  - (i) for sub-paragraph (a) there were substituted—
    - “(a) either—

- (i) entitled to an employment and support allowance, or
- (ii) a person who has made a claim for an employment and support allowance to which regulations under section 5(1)(c) of the Administration Act apply; and”, and
- (ii) for “continuing to be” there were substituted “being”; and
- (b) in section 12(1)—
  - (i) for sub-paragraph (a) there were substituted—
    - “(a) either—
      - (i) entitled to an employment and support allowance, or
      - (ii) a person who has made a claim to which section 5 applies; and”, and
    - (ii) for “continuing to be” there were substituted “being”.

## PART 9

### AMOUNTS OF ALLOWANCE

#### CHAPTER 1

##### Prescribed amounts

##### **Prescribed amounts**

**67.**—(1) Subject to regulations 68, 69 and 163 (polygamous marriages, special cases and urgent cases), the amounts prescribed for the purposes of the calculation of the amount of an income-related allowance under section 4(2)(a) of the Act in relation to a claimant are such of the following amounts as may apply in the claimant’s case—

- (a) an amount in respect of the claimant or, if the claimant is a member of a couple, an amount in respect of both of them determined in accordance with paragraph 1(1), (2) or (3) of Schedule 4 (amounts) as the case may be;
- (b) the amount of any premiums which may be applicable to the claimant determined in accordance with Parts 2 and 3 of that Schedule (premiums);
- (c) any amounts determined in accordance with Schedule 6 (housing costs) which may be applicable to the claimant in respect of mortgage interest repayments or such other housing costs as are prescribed in that Schedule.

(2) Subject to regulation 69, the amount prescribed for the purposes of the calculation of the amount of a claimant’s contributory allowance under section 2(1)(a) of the Act is the amount determined in accordance with paragraph 1(1) of Schedule 4 as may apply in the claimant’s case.

(3) Subject to regulation 69, the amount of the work-related activity component and the support component are prescribed in Part 4 of Schedule 4.

##### **Polygamous marriages**

**68.**—(1) Subject to regulations 69 and 163 (special cases and urgent cases), where a claimant is a husband or wife by virtue of a polygamous marriage the amounts prescribed for the purposes of the calculation of the amount of an income-related allowance under section 4(2)(a) of the Act are such of the following amounts as may apply in the claimant’s case—

- (a) an amount in respect of the claimant and the other party to the marriage determined in accordance with paragraph 1(3) of Schedule 4;
  - (b) an amount equal to the difference between the amounts specified in paragraph 1(3)(a) (couple where both aged 18 and over) and 1(1)(b) (single claimant aged 25 and over) of Schedule 4 in respect of each spouse additional to the marriage;
  - (c) the amount of any premiums which are applicable to the claimant determined in accordance with Parts 2 and 3 of that Schedule (premiums);
  - (d) any amounts determined in accordance with Schedule 6 (housing costs) which may be applicable to the claimant in respect of mortgage interest payments or such other housing costs as are prescribed in that Schedule.
- (2) In the case of a partner who is aged less than 18, the amount which applies in respect of that partner is nil unless—
- (a) that partner is treated as responsible for a child; or
  - (b) that partner is a person who—
    - (i) had that partner not been a member of a polygamous marriage would have qualified for an income-related allowance,
    - (ii) satisfies the requirements of Article 5(1)(f)(iii) of the Jobseekers Order (prescribed circumstances for persons aged 16 but less than 18), or
    - (iii) is the subject of a direction under Article 18 of that Order<sup>(73)</sup> (persons under 18: severe hardship).

### Special cases

**69.**—(1) In the case of a claimant to whom any paragraph in column (1) of Schedule 5 applies (amounts in special cases), the amount in respect of the claimant is to be the amount in the corresponding paragraph in column (2) of that Schedule.

(2) In Schedule 5—

“partner of a person subject to immigration control” means a person—

- (a) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act; or
- (b) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000<sup>(74)</sup>; and
- (c) who is a member of a couple and the member’s partner is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to the partner for the purposes of exclusion from entitlement to an income-related allowance;

“patient” means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005<sup>(75)</sup>;

“person from abroad” has the meaning given by regulation 70;

“person in hardship” means a person who satisfies regulation 158 but only for a period not exceeding 6 weeks;

“prisoner” means a person who—

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<sup>(73)</sup> Article 18 was amended by paragraph 108 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

<sup>(74)</sup> S.R. 2000 No. 71

<sup>(75)</sup> S.R. 2005 No. 580

- (d) is detained in custody pending trial or sentence on conviction or under a sentence imposed by a court; or
  - (e) is on temporary release in accordance with the provisions of the Prison Act (Northern Ireland) 1953<sup>(76)</sup>,
- other than a person who is detained in hospital under the provisions of the Mental Health Order.

### **Special cases: supplemental – persons from abroad**

**70.**—(1) “Person from abroad” means, subject to the following provisions of this regulation, a claimant who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(2) A claimant must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the claimant has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3).

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

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006<sup>(77)</sup>;
  - (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the claimant 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<sup>(78)</sup>; or
  - (d) Article 39 of the Treaty establishing the European Community (in a case where the claimant is a person seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).
- (4) A claimant is not a person from abroad if the claimant 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(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 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—
    - (i) regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004<sup>(79)</sup> (application of the 2006 Regulations in relation to a national of the Czech

<sup>(76)</sup> 1953 c. 18 (N.I.)

<sup>(77)</sup> S.I. 2006/1003

<sup>(78)</sup> O.J. No. L158, 30.4.04, p.77

<sup>(79)</sup> S.I. 2004/1219

- Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia or the Slovak Republic who is an “accession State worker requiring registration”), or
- (ii) regulation 6 of the Accession (Immigration and Worker Authorisation) Regulations 2006<sup>(80)</sup> (right of residence of a Bulgarian or Romanian who is an “accession State national subject to worker authorisation”);
- (g) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951<sup>(81)</sup>, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967<sup>(82)</sup>;
- (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<sup>(83)</sup>;
- (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 deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom; or
- (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.

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

**71.**—(1) In these Regulations, “non-dependant” means any person, except someone to whom paragraph (2), (3) or (4) 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) a child or young person who is living with the claimant but who is not a member of the claimant’s household;
- (c) a person who lives with the claimant in order to care for the claimant or for the claimant’s partner and who is engaged for that purpose by a charitable or voluntary organisation which makes a charge to the claimant or the claimant’s partner for the care provided by that person;
- (d) the partner of a person to whom sub-paragraph (c) applies.

(3) This paragraph applies to a person, other than a close relative of the claimant or the claimant’s partner—

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

(4) Subject to paragraph (5), this paragraph applies to—

- (a) a person who jointly occupies the claimant’s dwelling and who is either—
- (i) a co-owner of that dwelling with the claimant or the claimant’s partner (whether or not there are other co-owners), or

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<sup>(80)</sup> S.I. 2006/3317

<sup>(81)</sup> Cmnd. 9171

<sup>(82)</sup> Cmnd. 3906

<sup>(83)</sup> 1971 c. 77

(ii) jointly liable with the claimant or the claimant's partner to make payments to a landlord in respect of the person's occupation of that dwelling;

(b) a partner of a person to whom sub-paragraph (a) applies.

(5) Where a person is a close relative of the claimant or the claimant's partner, paragraph (4) applies to that person only if the claimant's, or the claimant's partner's, co-ownership, or joint liability to make payments to a landlord in respect of occupation of the dwelling arose either before 11th April 1988 or, if later, on or before the date on which the claimant or the claimant's partner first occupied the dwelling in question.

(6) For the purposes of this regulation a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area but not if each person is separately liable to make payments in respect of occupation of the dwelling to the landlord.

(7) In this regulation "communal area" means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation.

## CHAPTER 2

### Deductions from the contributory allowance

#### **Permanent health insurance**

72.—(1) For the purposes of sections 2(1)(c) and 3 of the Act (deductions from contributory allowance) pension payment is to include a permanent health insurance payment.

(2) In this regulation and regulation 75 "permanent health insurance payment" means any periodical payment arranged by an employer under an insurance policy providing benefits in connection with physical or mental illness or disability, in relation to a former employee on the termination of that person's employment.

#### **Councillor's allowance**

73. For the purposes of section 3(1)(c) of the Act—

- (a) a councillor's allowance is a payment of a prescribed description; and
- (b) the prescribed bodies carrying out public or local functions are district councils.

#### **Deductions for pension payment and PPF payment**

74.—(1) Where—

- (a) a claimant is entitled to a contributory allowance in respect of any period of a week or part of a week;
- (b) there is—
  - (i) a pension payment,
  - (ii) a PPF periodic payment, or
  - (iii) any combination of the payments specified in heads (i) and (ii),
 payable to that person in respect of that period (or a period which forms part of that period or includes that period or part of it); and
- (c) the amount of the payment, or payments when taken together, exceeds—
  - (i) if the period in question is a week, £85·00, or
  - (ii) if that period is not a week, such proportion of the amount mentioned in head (i) as falls to be calculated in accordance with regulation 94(1) or (6) (calculation of weekly amount of income),

the amount of that allowance is to be reduced by an amount equal to 50 per cent. of the excess.

(2) For the purposes of this Chapter “payment” means a payment referred to in paragraph (1)(b).

### **Payments treated as not being payments to which section 3 of the Act applies**

**75.** The following payments are to be treated as not being payments to which section 3 of the Act applies—

- (a) any pension payment made to a claimant as a beneficiary on the death of a member of any pension scheme;
- (b) any PPF periodic payment made to a claimant as a beneficiary on the death of a person entitled to such a payment;
- (c) where a pension scheme is in deficit or has insufficient resources to meet the full pension payment, the extent of the shortfall;
- (d) any pension payment made under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003<sup>(84)</sup>;
- (e) any guaranteed income payment;
- (f) any permanent health insurance payment in respect of which the employee had contributed to the premium to the extent of more than 50 per cent.

### **Deductions for councillor’s allowance**

**76.—**(1) Where the net amount of councillor’s allowance to which a claimant is entitled in respect of any week exceeds £88·50, an amount equal to the excess is to be deducted from the amount of a contributory allowance to which that person is entitled in respect of that week, and only the balance remaining (if any) is to be payable.

(2) In paragraph (1) “net amount”, in relation to any councillor’s allowance to which a claimant is entitled, means the aggregate amount of the councillor’s allowance or remuneration to which that claimant is entitled for the week in question, reduced by the amount of any payment in respect of expenses wholly, exclusively and necessarily incurred by that claimant, in that week, in the performance of the duties of a councillor.

### **Date from which payments are to be taken into account**

**77.** Where regulations 74(1) and 76(1) apply, deductions must have effect, calculated where appropriate in accordance with regulation 94(1) or (6), from the first day of the benefit week in which the payment or councillor’s allowance is paid to a claimant who is entitled to a contributory allowance in that week.

### **Date from which a change in the rate of the payment takes effect**

**78.** Where a payment or councillor’s allowance is already being made to a claimant and the rate of that payment or that allowance changes, the deduction at the new rate must take effect, calculated where appropriate in accordance with regulation 94(1) or (6), from the first day of the benefit week in which the new rate of the payment or councillor’s allowance is paid.

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(84) 2003 c. 1

**Calculation of payment made other than weekly**

**79.**—(1) Where the period in respect of which a payment or councillor's allowance is paid is otherwise than weekly, an amount calculated or estimated in accordance with regulation 94(1) or (6) is to be regarded as the weekly amount of that payment or allowance.

(2) In determining the weekly payment, where 2 or more payments are payable to a claimant, each payment is to be calculated separately in accordance with regulation 94(1) or (6) before aggregating the sum of those payments for the purposes of the reduction of a contributory allowance in accordance with regulation 74.

**CHAPTER 3****Statutory payments****Effect of statutory maternity pay on a contributory allowance**

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

- (a) a woman is entitled to statutory maternity pay and on the day immediately preceding the first day in the maternity pay period—
  - (i) is in a period of limited capability for work, and
  - (ii) satisfies the conditions of entitlement to a contributory allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the maternity pay period—
  - (i) she is in a period of limited capability for work, and
  - (ii) that day is not a day where she is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(2) of the Act, a woman who is entitled to statutory maternity pay is to be entitled to a contributory allowance in respect of any day that falls within the maternity pay period.

(3) Where by virtue of paragraph (2) a woman is entitled to a contributory allowance for any week (including part of a week), the total amount of such benefit payable to her for that week is to be reduced by an amount equivalent to any statutory maternity pay to which she is entitled in accordance with Part 12 of the Contributions and Benefits Act for the same week (or equivalent part of a week where entitlement to a contributory allowance is for part of a week) and only the balance, if any, of the contributory allowance is to be payable to her.

**Effect of statutory adoption pay on a contributory allowance**

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

- (a) a claimant is entitled to statutory adoption pay and, on the day immediately preceding the first day in the adoption pay period—
  - (i) is in a period of limited capability for work, and
  - (ii) satisfies the conditions of entitlement to a contributory allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the adoption pay period—
  - (i) that claimant is in a period of limited capability for work, and
  - (ii) that day is not a day where that claimant is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(4) of the Act, a claimant who is entitled to statutory adoption pay is to be entitled to a contributory allowance in respect of any day that falls within the adoption pay period.

(3) Where by virtue of paragraph (2) a claimant is entitled to a contributory allowance for any week (including part of a week), the total amount of such benefit payable to that claimant for that week is to be reduced by an amount equivalent to any statutory adoption pay to which that claimant is entitled in accordance with Part 12ZB of the Contributions and Benefits Act(85) for the same week (or equivalent part of a week where entitlement to a contributory allowance is for part of a week) and only the balance, if any, of the contributory allowance is to be payable to that claimant.

### **Effect of additional statutory paternity pay on a contributory allowance**

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

- (a) a claimant is entitled to additional statutory paternity pay and on the day immediately preceding the first day in the additional paternity pay period—
  - (i) is in a period of limited capability for work, and
  - (ii) satisfies the conditions of entitlement to a contributory allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the additional statutory paternity pay period—
  - (i) that claimant is in a period of limited capability for work, and
  - (ii) that day is not a day where that claimant is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(6) of the Act, a claimant who is entitled to additional statutory paternity pay is to be entitled to a contributory allowance in respect of any day that falls within the additional paternity pay period.

(3) Where by virtue of paragraph (2) a person is entitled to a contributory allowance for any week (including part of a week), the total amount of such benefit payable to that claimant for that week is to be reduced by an amount equivalent to any additional statutory paternity pay to which that claimant is entitled in accordance with Part 12ZA of the Contributions and Benefits Act(86) for the same week (or equivalent part of a week where entitlement to a contributory allowance is for part of a week) and only the balance, if any, of the contributory allowance is to be payable to that claimant.

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(85) Part 12ZB was inserted by Article 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)) and amended by paragraph 269(2) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), paragraph 103 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and Article 4 of, and paragraph 20 of Schedule 1 to, the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) and paragraph 1(7) of Schedule 7 and Schedule 8 to S.R. 2006 No. 261

(86) Part 12ZA was inserted by Article 5 of the Employment (Northern Ireland) Order 2002 and amended by paragraph 268(2) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003, Articles 8 to 12 of, and paragraphs 9 to 19 of Schedule 1 to, the Work and Families (Northern Ireland) Order 2006 and paragraph 1(5) of Schedule 7 and Schedule 8 to S.R. 2006 No. 261

**PART 10**  
**INCOME AND CAPITAL**  
**CHAPTER 1**  
General

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

**83.**—(1) Subject to paragraph (4), the income and capital of a claimant's partner which by virtue of paragraph 6(2) of Schedule 1 to the Act is to be treated as income and capital of the claimant, is to be calculated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the "claimant" is, except where the context otherwise requires, to be construed, for the purposes of this Part, as if it were a reference to the claimant's partner.

(2) Subject to the following provisions of this Part, the income paid to, or in respect of, and capital of, a child or young person who is a member of the claimant's family is not to be treated as the income or capital of the claimant.

(3) Subject to paragraph (5), where a claimant or the partner of a claimant is married polygamously to 2 or more members of the claimant's household—

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

(4) Where at least one member of a couple is aged less than 18 and the applicable amount of the couple falls to be determined under paragraph 1(3)(e), (f), (g), (h) or (i) of Schedule 4 (amounts), the income of the claimant's partner is not to be treated as the income of the claimant to the extent that—

- (a) in the case of a couple where both members are aged less than 18, the amount specified in paragraph 1(3)(c) of that Schedule exceeds the amount specified in paragraph 1(3)(i) of that Schedule; and
- (b) in the case of a couple where only one member is aged less than 18, the amount specified in paragraph 1(3)(a) of that Schedule exceeds the amount which is specified in paragraph 1(3)(h) of that Schedule.

(5) Where a member of a polygamous marriage is a partner aged less than 18 and the amount which applies in respect of that partner under regulation 68(2) (polygamous marriages) is nil, the claimant is not to be treated as possessing the income of that partner to the extent that an amount in respect of that partner would have been included in the applicable amount if the partner had fallen within the circumstances set out in regulation 68(2)(a) or (b).

**Income of participants in the self-employment route**

**84.** Chapters 2, 3, 4, 6, 8 and 9 and regulations 132 to 137, 142 and 143 do not apply to any income which is to be calculated in accordance with Chapter 5 (participants in the self-employment route).

**Liable relative payments**

**85.** Regulations 91, 93, 94, 104 and 106 and Chapter 8 do not apply to any payment which is to be calculated in accordance with Chapter 9 (child support).

### **Child support**

86. Regulations 91, 93, 94, 104 and 106 to 109 and Chapter 8 do not apply to any payment which is to be calculated in accordance with Chapter 9 (child support).

### **Calculation of income and capital of students**

87. The provisions of Chapters 2 to 7 (income and capital) are to have effect in relation to students and their partners subject to the provisions set out in Chapter 10 (students).

### **Calculation of income which consists of earnings of participants in exempt work**

88. Notwithstanding the other provisions of this Part, regulations 91(2), 92 to 99 and 108(2) and (3) and Schedule 7 (sums to be disregarded in the calculation of earnings) are to apply to any income which consists of earnings which is to be calculated for the purposes of regulations 45(2) to (4) (exempt work – earnings limits).

### **Calculation of income where pension payments, PPF periodic payments or councillor's allowance payable**

89. Notwithstanding the other provisions of this Part, regulation 94(1) and (6) is to apply for the purposes of calculating the amount of any pension payments, PPF periodic payments or councillor's allowance to which Chapter 2 of Part 9 (deductions from the contributory allowance) applies.

## **CHAPTER 2**

### **Income**

#### **Calculation of income**

90.—(1) For the purposes of paragraph 6(1) of Schedule 1 to the Act (conditions of entitlement to an income-related allowance), the income of a claimant is to be calculated on a weekly basis—

- (a) by determining in accordance with this Part, other than Chapter 7, the weekly amount of the claimant's income; and
- (b) by adding to that amount the weekly income calculated under regulation 118 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) "income" includes capital treated as income under regulation 105 and income which a claimant is treated as possessing under regulations 106 to 109 (notional income).

(3) For the purposes of paragraph 10 of Schedule 2 to the Act (effect of work), the income which consists of earnings of a claimant is to be calculated on a weekly basis by determining the weekly amount of those earnings in accordance with regulations 91(2), 92 to 99 and 108(2) and (3) and Schedule 7.

(4) For the purposes of paragraph (3), "income which consists of earnings" includes income which a claimant is treated as possessing under regulation 108(2) and (3).

(5) For the purposes of pension payments, PPF periodic payments and a councillor's allowance to which section 3 of the Act applies, the income other than earnings of a claimant is to be calculated on a weekly basis by determining in accordance with regulation 94(1), (2), (5) and (6) the weekly amount of the pension payments, PPF periodic payments or a councillor's allowance paid to the claimant.

### **Calculation of earnings derived from employed earner's employment and income other than earnings**

**91.**—(1) Earnings derived from employment as an employed earner and income which does not consist of earnings are to be taken into account over a period determined in accordance with the following provisions of this regulation and at a weekly amount determined in accordance with regulation 94 (calculation of weekly amount of income).

(2) Subject to the following provisions of this regulation, the period over which a payment is to be taken into account is to be—

- (a) where the payment is monthly, a period equal to the number of weeks from the date on which the payment is treated as paid to the date immediately before the date on which the next monthly payment would have been so treated as paid whether or not the next monthly payment is actually paid;
- (b) where the payment is in respect of a period which is not monthly, a period equal to the length of the period for which payment is made;
- (c) in any other case, a period equal to such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing—
  - (i) the net earnings, or
  - (ii) in the case of income which does not consist of earnings, the amount of that income less any amount paid by way of tax on that income which is disregarded under paragraph 1 of Schedule 8 (income other than earnings to be disregarded),

by the amount of an income-related allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from that payment under Schedule 7 (earnings to be disregarded) or, as the case may be, any paragraph of Schedule 8 other than paragraph 1 of that Schedule, as is appropriate in the claimant's case,

and that period is to begin on the date on which the payment is treated as paid under regulation 93 (date on which income is treated as paid).

(3) Where grant income, as defined in Chapter 10, has been paid to a claimant who ceases to be a full-time student before the end of the period in respect of which that income is payable and, as a consequence, the whole or part of that income falls to be repaid by that claimant, that income is to be taken into account over the period beginning on the date on which that income is treated as paid under regulation 93 and ending—

- (a) on the date on which repayment is made in full;
- (b) where the grant is paid in instalments, on the day before the next instalment would have been paid had the claimant remained a full-time student; or
- (c) on the last date of the academic term or vacation during which that claimant ceased to be a full-time student,

whichever is the earlier.

(4) Where, but for this paragraph—

- (a) earnings not of the same kind are derived from the same source; and
- (b) the periods in respect of which those earnings would fall to be taken into account overlap, wholly or partly,

those earnings are to be taken into account over a period equal to the aggregate length of those periods and that period is to begin with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 93.

(5) In a case to which paragraph (4) applies, earnings under regulation 95 (earnings of employed earners) are to be taken into account in the following order of priority—

- (a) earnings normally derived from the employment;
- (b) any payment to which paragraph (1)(b) or (c) of that regulation applies;
- (c) any payment to which paragraph (1)(j) of that regulation applies;
- (d) any payment to which paragraph (1)(d) of that regulation applies.

(6) Where earnings to which regulation 95(1)(b) to (d) applies are paid in respect of part of a day, those earnings are to be taken into account over a period equal to a day.

(7) Any earnings to which regulation 95(1)(j) applies which are paid in respect of, or on the termination of, part-time employment, are to be taken into account over a period equal to one week.

(8) In this regulation “part-time employment” means, if the claimant were entitled to income support, employment in which the claimant is not to be treated as engaged in remunerative work under regulation 5 or 6(1) and (4) of the Income Support Regulations<sup>(87)</sup> (persons treated, or not treated, as engaged in remunerative work).

(9) For the purposes of this regulation the claimant’s earnings and income which does not consist of earnings are to be calculated in accordance with Chapters 3 and 6 respectively.

#### **Calculation of earnings of self-employed earners**

**92.**—(1) Except where paragraph (2) applies, where a claimant’s income consists of earnings from employment as a self-employed earner the weekly amount of the claimant’s earnings is to be determined by reference to the claimant’s average weekly earnings from that employment—

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

(2) Where the claimant’s earnings consist of—

- (a) royalties;
- (b) sums paid periodically for or in respect of any copyright; or
- (c) payments in respect of any book registered under the Public Lending Right Scheme 1982<sup>(88)</sup>,

those earnings are to be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing the earnings by the amount of an income-related allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 7 (sums to be disregarded in the calculation of earnings) as is appropriate in the claimant’s case.

(3) For the purposes of this regulation the claimant’s earnings are to be calculated in accordance with Chapter 4.

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<sup>(87)</sup> Relevant amending Rules are S.R. 1988 Nos. 146, 318 and 431, S.R. 1989 No. 365, S.R. 1990 No. 131, S.R. 1991 No. 338, S.R. 1992 Nos. 147 and 403, S.R. 1993 No. 373, S.R. 1994 No. 327, S.R. 1995 No. 86, S.R. 1996 No. 405, S.R. 1999 Nos. 342, 381 and 472 (C. 36), S.R. 2000 No. 74, S.R. 2001 No. 78, S.R. 2002 No. 363, S.R. 2004 No. 163 and S.R. 2005 No. 458

<sup>(88)</sup> See Appendix 2 to S.I. 1990/2360

**Date on which income is treated as paid**

**93.**—(1) Except where paragraph (2) or (3) applies, a payment of income to which regulation 91 (calculation of earnings derived from employed earner’s employment and income other than earnings) applies is to be treated as paid—

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

(2) Employment and support allowance, income support, jobseeker’s allowance, maternity allowance, short-term or long-term incapacity benefit or severe disablement allowance is to be treated as paid on the day of the benefit week in respect of which it is payable.

(3) Working tax credit or child tax credit is to be treated as paid—

- (a) where the award of that tax credit begins on the first day of a benefit week, on that day;
- (b) on the first day of the benefit week that follows the date on which the award begins; or
- (c) on the first day of the first benefit week that follows the date on which an award of an income-related allowance begins, if later,

until the last day of the last benefit week that coincides with or immediately follows the last day for which the award of that tax credit is made.

**Calculation of weekly amount of income**

**94.**—(1) For the purposes of regulation 91 (calculation of earnings derived from employed earner’s employment and income other than earnings) and Chapter 2 of Part 9 (deductions from contributory allowance), subject to paragraphs (2) to (8), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount is to be the amount of that payment;
- (b) exceeds a week, the weekly amount is to be determined—
  - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52,
  - (ii) in a case where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52,
  - (iii) in a case where that period is a year by dividing the amount of the payment by 52,
  - (iv) in any other case by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) Where a payment for a period not exceeding a week is treated under regulation 93(1)(a) (date on which income is treated as paid) as paid before the first benefit week and a part is to be taken into account for some days only in that week (“relevant days”), the amount to be taken into account for the relevant days is to be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(3) Where a payment is in respect of a period equal to or in excess of a week and a part thereof is to be taken into account for some days only in a benefit week (“relevant days”), the amount to be taken into account for the relevant days is, except where paragraph (4) applies, to be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(4) In the case of a payment of—

- (a) maternity allowance, short-term or long-term incapacity benefit or severe disablement allowance, the amount to be taken into account for the relevant days is to be the amount of benefit payable in respect of those days;
- (b) an employment and support allowance, income support or a jobseeker's allowance the amount to be taken into account for the relevant days is to be calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by 7.

(5) Except in the case of a payment which it has not been practicable to treat under regulation 93(1)(b) (date on which income is treated as paid) as paid on the first day of the benefit week in which it is due to be paid, where a payment of income from a particular source is or has been paid regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of that income to be taken into account in any one benefit week is not to exceed the weekly amount determined under paragraph (1)(a) or (b) of the payment which under regulation 93(1)(b) is treated as paid first.

(6) Where the amount of the claimant's income fluctuates and has changed more than once, or a claimant's regular pattern of work is such that the claimant does not work every week, the foregoing paragraphs may be modified so that the weekly amount of the claimant's income is determined by reference to the claimant's average weekly income—

- (a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (b) in any other case, over a period of 5 weeks or such other period as may, in the particular case, enable the claimant's average weekly income to be determined more accurately.

(7) Where income is taken into account under paragraph (3) of regulation 91 over the period specified in that paragraph, the amount of that income to be taken into account in respect of any week in that period is to be an amount equal to the amount of that income which would have been taken into account under regulation 132 (calculation of grant income) had the person to whom that income was paid not ceased to be a full-time student.

(8) Where any payment of earnings is taken into account under paragraph (7) of regulation 91 (calculation of earnings derived from employed earner's employment and income other than earnings), over the period specified in that paragraph, the amount to be taken into account is to be equal to the amount of the payment.

## CHAPTER 3

### Employed earners

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

**95.**—(1) Subject to paragraphs (2) and (3), “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 the claimant's employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay except any payable more than 4 weeks after the termination or interruption of 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 the claimant's home and place of employment,
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of the claimant's family owing to the claimant's absence from home;
  - (g) any award of compensation made under Article 146(4) or 151(3)(a) of the Employment Rights Order(89) (the remedies: orders and compensation enforcement of order and compensation);
  - (h) any payment or remuneration made under Article 60, 66, 96, 100 or 102 of the Employment Rights Order (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to industrial tribunals);
  - (i) any such sum as is referred to in section 112(3) of the Contributions and Benefits Act(90) (certain sums to be earnings for social security purposes);
  - (j) where a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation;
  - (k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001(91).
  - (l) any payment made under the legislation of, or under any scheme operating in, the Republic of Ireland which is analogous to any income to which this paragraph relates.
- (2) "Earnings" are not to include—
- (a) subject to paragraph (3), any payment in kind;
  - (b) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave, paternity leave or adoption leave or is absent from work because the claimant is ill;
  - (c) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - (d) any occupational pension;
  - (e) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme(92).
- (3) Paragraph (2)(a) is not to apply in respect of any non-cash voucher referred to in paragraph (1)(k).
- (4) In this regulation—
- "compensation" means any payment made in respect of, or on the termination of, employment in a case where a claimant has not received or received only part of a payment in lieu of notice due or which would have been due to the claimant had that claimant not waived the right to receive it, other than—
- (a) any payment specified in paragraph (1)(a) to (i) or (l);
  - (b) any payment specified in paragraph (2)(a) to (e);
  - (c) any redundancy payment within the meaning of Article 170(1) of the Employment Rights Order;

(89) Article 146(4) was amended by 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 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

(90) Section 112(3) was amended by Schedule 1 to the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16))

(91) S.I. 2001/1004

(92) See the Schedule to S.I. 1996/3182

(d) any refund of contributions to which that person was entitled under an occupational pension scheme;

“part-time employment” means, if the claimant were entitled to income support, employment in which the claimant is not to be treated as engaged in remunerative work under regulation 5 or 6(1) and (4) of the Income Support Regulations (persons treated, or not treated, as engaged in remunerative work).

### **Calculation of net earnings of employed earners**

**96.**—(1) For the purposes of regulation 91 (calculation of earnings derived from employed earner’s employment and income other than earnings) the earnings of a claimant derived from employment as an employed earner to be taken into account, subject to paragraph (2), are the claimant’s net earnings.

(2) There is to be disregarded from a claimant’s net earnings, any sum, where applicable, specified in paragraphs 1 to 12 of Schedule 7 (sums to be disregarded in the calculation of earnings).

(3) For the purposes of paragraph (1) net earnings are to be calculated by taking into account the gross earnings of the claimant from that employment less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax,
  - (ii) primary Class 1 contributions under section 6(1)(a) of the Contributions and Benefits Act(93);
- (b) one half of any sum paid by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

(4) 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 Department, would have been deducted had the claimant been employed in Northern Ireland.

## **CHAPTER 4**

### **Self-employed earners**

#### **Earnings of self-employed earners**

**97.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and includes any allowance paid under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(94), section 1 of the Employment and Training Act(95) or any equivalent allowance payable under Republic of Ireland legislation to the claimant for the purpose of assisting the claimant in carrying on the claimant’s business.

- (2) “Earnings” do not include—
  - (a) where a claimant is involved in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge;

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(93) Section 6 was substituted by paragraph 2 of Schedule 10 to the Welfare Reform and Pensions Act 1999 (c. 30) and amended by section 81(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19)

(94) 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))

(95) 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))

- (b) any payment to which paragraph 27 or 28 of Schedule 8 refers (sums to be disregarded in the calculation of income other than earnings);
- (c) any sports award.

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

**98.**—(1) For the purposes of regulation 92 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account are to be—

- (a) in the case of a self-employed earner who is engaged in employment on that self-employed earner's 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<sup>(96)</sup>, that self-employed earner's share of the net profit derived from that employment less—
  - (i) an amount in respect of income tax and of National Insurance contributions payable under the Contributions and Benefits Act calculated in accordance with regulation 99 (deduction of tax and contributions for self-employed earners), and
  - (ii) one half of any premium paid in the period that is relevant under regulation 92 in respect of a personal pension scheme.

(2) There is to be disregarded from a claimant's net profit any sum, where applicable, specified in paragraphs 1 to 11 of Schedule 7.

(3) For the purposes of paragraph (1)(a) the net profit of the employment, except where paragraph (9) applies, is to be calculated by taking into account the earnings of the employment over the period determined under regulation 92 less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax, and
  - (ii) National Insurance contributions payable under the Contributions and Benefits Act, calculated in accordance with regulation 99; and
- (c) one half of any premium paid in the period that is relevant under regulation 92 in respect of a personal pension scheme.

(4) For the purposes of paragraph (1)(b), the net profit of the employment is to be calculated by taking into account the earnings of the employment over the period determined under regulation 92 less, subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purpose of that employment.

(5) Subject to paragraph (6), a deduction is not to be made under paragraph (3)(a) or (4) in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the period determined under regulation 92;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;

- (f) any expenses incurred in providing business entertainment.
- (6) A deduction is to 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(97).
- (7) The Department will refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where it is not satisfied that the expense has been defrayed or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.
- (8) For the avoidance of doubt—
  - (a) a deduction is not to 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 is to be made thereunder in respect of—
    - (i) the excess of any VAT paid over VAT received in the period determined under regulation 92,
    - (ii) any income expended in the repair of an existing 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 is to be one third of the earnings of that employment, less—
  - (a) an amount in respect of—
    - (i) income tax, and
    - (ii) National Insurance contributions payable under the Contributions and Benefits Act, calculated in accordance with regulation 99; and
  - (b) one half of any premium paid in respect of a personal pension scheme.
- (10) Notwithstanding regulation 92 and the foregoing paragraphs, the Department may assess any item of a claimant's income or expenditure over a period other than that determined under regulation 92 as may, in the particular case, enable the weekly amount of that item of income or expenditure to be determined more accurately.
- (11) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and that claimant is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of the claimant's employments is not to be offset against the claimant's earnings in any other of the claimant's employments.
- (12) Where the claimant is a self-employed earner in the Republic of Ireland the amounts to be deducted for income tax and National Insurance contributions under this regulation are to be such amounts as, in the opinion of the Department, would have been deducted had the claimant been employed in Northern Ireland.

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

**99.**—(1) Subject to paragraph (2), the amount to be deducted in respect of income tax under regulation 98(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) is to be calculated on the basis of the amount of chargeable income and as if that income were assessable

to income tax at the starting rate or, as the case may be, the starting rate and the basic rate of tax less only the personal allowance to which the claimant is entitled under sections 35 and 38 to 40 of the Income Tax Act 2007<sup>(98)</sup> (personal allowances) as is appropriate to the claimant's circumstances.

(2) If the period determined under regulation 92 is less than a year the earnings to which the starting rate of tax is to be applied and the amount of the personal allowance deductible under paragraph (1) is to be calculated on a pro rata basis.

(3) The amount to be deducted in respect of National Insurance contributions under regulation 98(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) is to be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, (3) of the Contributions and Benefits Act<sup>(99)</sup> at the rate applicable at the date of claim except where the claimant's chargeable income is less than the amount specified in subsection (4) of that section (small earnings exception) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year is to be reduced pro rata; and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act<sup>(100)</sup> (Class 4 contributions recoverable under the Income Taxes Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but if the assessment period is less than a year, those limits are to be reduced pro rata.

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

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under regulation 98(3)(a) or (4), as the case may be;
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

## CHAPTER 5

### Participants in the self-employment route

#### Interpretation

**100.** In this Chapter "special account" means, where a claimant is carrying on a commercial activity in respect of which assistance is received under the self-employment route, the account into which the gross receipts from that activity are payable during the period in respect of which such assistance is received.

#### Treatment of gross receipts of participants in the self-employment route

**101.** The gross receipts of a commercial activity carried on by a claimant in respect of which assistance is received under the self-employment route, are to be taken into account in accordance with the following provisions of this Chapter.

<sup>(98)</sup> 2007 c. 3

<sup>(99)</sup> Section 11 was amended by paragraph 13 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and Article 2 of S.I. 2008/579

<sup>(100)</sup> Section 15 was amended by section 13 of the Limited Liability Partnerships Act 2000 (c.12), section 3(2) of the National Insurance Contributions Act 2002 (c. 19), paragraph 424 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5) and Article 4 of S.I. 2008/579

### **Calculation of income of participants in the self-employment route**

**102.**—(1) The income of a claimant who has received assistance under the self-employment route is to be calculated by taking into account the whole of the monies in the special account at the end of the last day on which such assistance was received and deducting from those monies—

- (a) an amount in respect of income tax calculated in accordance with regulation 103; and
- (b) any sum to which paragraph (4) refers.

(2) Income calculated pursuant to paragraph (1) is to be apportioned equally over a period which starts on the date the income is treated as paid under paragraph (3) and is equal in length to the period beginning with the day on which assistance was first received under the self-employment route and ending on the last day on which such assistance was received.

(3) Income calculated pursuant to paragraph (1) is to be treated as paid—

- (a) in the case where it is due to be paid before the first benefit week in respect of which the participant or the participant’s partner first claims an income-related allowance following the last day on which assistance was received under the self-employment route, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid.

(4) This paragraph refers, where applicable, in each benefit week in respect of which income calculated pursuant to paragraph (1) is taken into account pursuant to paragraphs (2) and (3), to the sums which would have been disregarded under paragraph 7(1) of Schedule 7 had the income been earnings.

### **Deduction in respect of tax for participants in the self-employment route**

**103.**—(1) The amount to be deducted in respect of income tax under regulation 102(1)(a) in respect of the period determined under regulation 102(2) is to be calculated as if—

- (a) the chargeable income is the only income chargeable to tax;
- (b) the personal allowance applicable to the person receiving assistance under the self-employment route by virtue of sections 35 and 45 to 55 of the Income Tax Act 2007 is allowable against that income; and
- (c) the rate at which the chargeable income less the personal allowance is assessable to income tax is the starting rate of tax or, as the case may be, the starting rate and the basic rate of tax.

(2) For the purpose of paragraph (1), the starting rate of tax to be applied and the amount of the personal allowance deductible is, where the period determined under regulation 102(2) is less than a year, to be calculated on a pro rata basis.

(3) In this regulation, “chargeable income” means the monies in the special account at the end of the last day upon which assistance was received under the self-employment route.

## **CHAPTER 6**

### **Other income**

#### **Calculation of income other than earnings**

**104.**—(1) For the purposes of regulation 91 (calculation of earnings derived from employed earner’s employment and income other than earnings) the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs (2) to (7), be the claimant’s gross income and any capital treated as income under regulation 105.

(2) There is to be disregarded from the calculation of a claimant's gross income under paragraph (1), any sum, where applicable, specified in Schedule 8.

(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) is to be the gross amount payable.

(4) Paragraph (5) applies where—

- (a) a relevant payment has been made to a claimant in an academic year; and
- (b) that claimant abandons, or is dismissed from, that claimant's course of study before the payment to the claimant of the final instalment of the relevant payment.

(5) 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 claimant to whom paragraph (4) applies, is to be calculated by applying the formula—

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

where—

- A = the total amount of the relevant payment which that claimant would have received had that claimant remained a student until the last day of the academic term in which the person abandoned, or was dismissed from, the course, less any deduction under regulation 137(6) (treatment of student loans);
- 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 immediately before that which includes the day on which the claimant abandoned, or was dismissed from, that claimant's 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 137(3) had the claimant not abandoned, or been dismissed from, the course and, in the case of a claimant who was not entitled to an income-related allowance immediately before that claimant abandoned, or was dismissed from, the course, had that claimant, at that time, been entitled to an income-related allowance;
- D = the number of benefit weeks in the assessment period.

(6) For the purposes of this paragraph and paragraphs (4) and (5)—

“academic year” and “student loan” have the meanings given by Chapter 10;

“assessment period” means the period beginning with the benefit week which includes the day on which the claimant abandoned, or was dismissed from, the 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 claimant;

“quarter” for the purposes of the definition of “assessment period”, in relation to an academic year, means a period in that year—

- (a) beginning on 1st January and ending on 31st March;
- (b) beginning on 1st April and ending on 30th June;
- (c) beginning on 1st July and ending on 31st August; or
- (d) beginning on 1st September and ending on 31st December;

“relevant payment” means either a student loan or an amount intended for the maintenance of dependants referred to in regulation 132(6) (calculation of grant income) or both.

(7) In the case of income to which regulation 91(3) (calculation of income of former students) applies, the amount of income to be taken into account for the purposes of paragraph (1) is to be the

amount of that income calculated in accordance with regulation 94(7) (calculation of weekly amount of income) and on the basis that none of that income has been repaid.

(8) Subject to paragraph (9), for the avoidance of doubt there is to be included as income to be taken into account under paragraph (1)—

- (a) any payment to which regulation 95(2) or 97(2) (payments not earnings) applies; or
- (b) in the case of a claimant who is receiving support provided under section 95 or 98 of the Immigration and Asylum Act(101), including support provided by virtue of regulations made under Schedule 9 to that Act(102), the amount of such support provided in respect of essential living needs of the claimant and the claimant’s partner (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to that Act.

(9) In the case of a claimant who is the partner of a person subject to immigration control and whose partner is receiving support provided 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, there is not to be included as income to be taken into account under paragraph (1) the amount of support provided in respect of essential living needs of the partner of the claimant and the claimant’s dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to that Act.

### **Capital treated as income**

**105.**—(1) Capital which is payable by instalments which are outstanding on—

- (a) the first day in respect of which an income-related allowance is payable or the date of the determination of the claim, whichever is earlier; or
- (b) in the case of a supersession, the date of that supersession,

is to be treated as income if the aggregate of the instalments outstanding and the amount of the claimant’s capital otherwise calculated in accordance with Chapter 7 exceeds £16,000.

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

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

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

### **Notional income – deprivation and income on application**

**106.**—(1) A claimant is to be treated as possessing income of which the claimant has deprived himself for the purpose of securing entitlement to an employment and support allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to, or increasing the amount of, income support or a jobseeker’s allowance.

(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) an employment and support allowance;
- (d) a jobseeker’s allowance;
- (e) working tax credit;
- (f) child tax credit;

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(101) Section 95 was amended by sections 44(6) and 50(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41)

(102) Schedule 9 was amended by sections 45(4) and 50(2) of the Nationality, Immigration and Asylum Act 2002

- (g) a personal pension scheme, occupational pension scheme or a payment made by the Board of the Pension Protection Fund where the claimant is aged under 60; or
- (h) any sum to which paragraph 42(2)(a) of Schedule 9 (capital to be disregarded) applies which is administered in the way referred to in paragraph 42(1)(a) of that Schedule,
- income which would become available to the claimant upon application being made but which has not been acquired by the claimant is to 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) A claimant who has attained the age of 60 is to be treated as possessing—
- (a) the amount of any income from an occupational pension scheme, a personal pension scheme or the Board of the Pension Protection Fund—
- (i) for which no claim has been made, and
- (ii) to which the claimant might expect to be entitled if a claim for it were made;
- (b) income from an occupational pension scheme which the claimant elected to defer, but only from the date on which it could be expected to be acquired were an application for it to be made.
- (4) This paragraph applies where a claimant aged not less than 60—
- (a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;
- (b) fails to purchase an annuity with the funds available in that scheme; and
- (c) either—
- (i) defers in whole or in part the payment of any income which would have been payable to the claimant by that claimant’s pension fund holder, or
- (ii) fails to take any necessary action to secure that the whole of any income which would be payable to the person by that claimant’s pension fund holder upon the person applying for it, is so paid, or
- (iii) income withdrawal is not available to the claimant under that scheme.
- (5) Where paragraph (4) applies, the amount of any income foregone is to be treated as possessed by that claimant, but only from the date on which it could be expected to be acquired were an application for it to be made.
- (6) The amount of any income foregone in a case where paragraph (4)(c)(i) or (ii) applies is to be the maximum amount of income which may be withdrawn from the fund and is to be determined by the Department which shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**103**).
- (7) The amount of any income foregone in a case where paragraph (4)(c)(iii) applies is to be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant occupational or personal pension scheme been held under a scheme where income withdrawal was available and is to be determined in the manner specified in paragraph (6).
- (8) In paragraph (4), “money purchase benefits” has the meaning given by section 176(1) of the Pension Schemes (Northern Ireland) Act 1993(**104**).

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(103) S.R. 1987 No. 465; regulation 7(5) was added by regulation 5(3) of S.R. 1995 No. 367

(104) 1993 c. 49; the definition of “money purchase benefits” was amended by paragraph 19 of the Schedule to S.R. 2005 No. 434

**Notional income – income due to be paid or income paid to or in respect of a third party**

**107.**—(1) Except in the case of a discretionary trust, or a trust derived from a payment made in consequence of a personal injury, any income which is due to be paid to the claimant but—

- (a) has not been paid to the claimant;
- (b) is not a payment prescribed in regulation 8 or 9 of the Social Security (Payments on Account, Overpayment and Recovery) Regulations (Northern Ireland) 1988(105) (duplication and prescribed payments or maintenance payments) and not made on or before the date prescribed in relation to it,

is, except for any amount to which paragraph (2) applies, to be treated as possessed by the claimant.

(2) This paragraph applies to—

- (a) an amount which is due to be paid to the claimant under an occupational pension scheme but which is not paid because the trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources;
- (b) any amount by which a payment made to the claimant from an occupational pension scheme falls short of the payment to which the claimant was due under the scheme where the shortfall arises because the trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities; or
- (c) any earnings which are due to an employed earner on the termination of that employed earner's employment by reason of redundancy but which have not been paid to that employed earner.

(3) Any payment of income, other than a payment of income specified in paragraph (5), made to a third party in respect of a single claimant or the claimant's partner (but not a member of the third party's family) is to be treated—

- (a) in a case where that payment is derived from—
  - (i) a payment of any benefit under the benefit Acts,
  - (ii) a payment from the Armed Forces and Reserve Forces Compensation Scheme,
  - (iii) a war disablement pension, war widow's pension or war widower's pension, or
  - (iv) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under a 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,as possessed by that single claimant, if it is paid to the claimant or by the claimant's partner, if it is paid to the claimant's partner;
- (b) in a case 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, as possessed by that single claimant or, as the case may be, by the claimant's partner;
- (c) in any other case, as possessed by that single claimant or the claimant's partner to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable, or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d) (housing costs), of that single claimant or, as the case may be, of the claimant's partner, or is used for any water charges for which that claimant or that partner is liable,

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(105) S.R. 1988 No. 142; regulation 8 was amended by regulation 14(4) of S.R. 1992 No. 6, regulation 15(3) of S.R. 1996 No. 289, Article 11(5) of S.R. 1999 No. 472 (C. 36), regulation 11(3) of S.R. 2001 No. 108, regulation 26(5) of S.R. 2003 No. 191, regulation 6(3) of S.R. 2005 No. 46 and regulation 2 of S.R. 2005 No. 582

but, except where sub-paragraph (a) applies, this paragraph does not apply to any payment in kind to the third party.

(4) Any payment of income, other than a payment of income specified in paragraph (5), made to a single claimant or the claimant's partner in respect of a third party (but not in respect of another member of the claimant's family) is to be treated as possessed by that single claimant or, as the case may be, the claimant's partner, to the extent that it is kept or used by that claimant or used by or on behalf of the claimant's partner but, except where paragraph (3)(a) applies, this paragraph does not apply to any payment in kind to the third party.

(5) Paragraphs (3) and (4) do 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 Fund (2006);
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994<sup>(106)</sup> (concessionary coal);
- (c) pursuant to section 1 of the Employment and Training 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<sup>(107)</sup>,
  - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations<sup>(108)</sup>,
  - (iii) in a qualifying course within the meaning of regulation 17A(7) of those Regulations<sup>(109)</sup>; or
- (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<sup>(110)</sup>,
  - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors, and
  - (iii) the person referred to in head (i) and that person's partner (if any) does not possess, or is not treated as possessing, any other income apart from that payment.

(6) Where the claimant resides in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital, or is temporarily absent from such a home or hospital, any payment made by a person other than the claimant or a member of the claimant's family in respect of some or all of the cost of maintaining the claimant or the claimant's partner in that home or hospital is to be treated as possessed by the claimant or the claimant's partner.

(7) In paragraph (2)(a) and (b) "resources" has the meaning given by section 176(1) of the Pension Schemes (Northern Ireland) Act 1993.

<sup>(106)</sup> 1994 c. 21

<sup>(107)</sup> Regulation 75(1) was substituted by regulation 8 of S.R. 1997 No. 541 and amended by paragraph 32(a) and (b) of Schedule 2 to S.R. 2000 No. 350 and sub-paragraph (a) was amended by regulation 2(4) of S.R. 2000 No. 197, regulation 5(a) of S.R. 2001 No. 151 and regulation 2(4) of S.R. 2002 No. 275

<sup>(108)</sup> Regulation 75(1)(b)(ii) was amended by regulation 8(b) of S.R. 1998 No. 198

<sup>(109)</sup> Regulation 17A was inserted by regulation 4 of S.R. 1998 No. 198

<sup>(110)</sup> 1980 c. 46

### **Notional income – other income**

**108.**—(1) Where a claimant’s earnings are not ascertainable at the time of the determination of the claim or of any revision or supersession the Department will treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(2) Subject to paragraph (3), 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 Department is to treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the Department that the means of that person are insufficient for the person to pay, or to pay more, for the service.

(3) Paragraph (2) shall not apply—

- (a) to a claimant who is engaged by a charitable or voluntary organisation or who is a volunteer if the Department is satisfied in any of those cases that it is reasonable for the claimant to provide the service free of charge;
- (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(**111**), 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(**112**) 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 claimant or the claimant’s partner participating in that programme;
- (c) to a claimant who is engaged in work experience whilst participating in—
  - (i) the New Deal for Lone Parents, or
  - (ii) a scheme which has been approved by the Department for Employment and Learning as supporting the objectives of the New Deal for Lone Parents; or
- (d) to a claimant who is participating in a work placement approved in writing by the Department for Employment and Learning (or a person providing services to that Department) before the placement starts and in this sub-paragraph “work placement” means practical work experience with an employer, which is neither paid nor undertaken in expectation of payment.

### **Notional income – calculation and interpretation**

**109.**—(1) Where a claimant is treated as possessing any income under regulation 106 or 107 the foregoing provisions of this Part are to 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 the claimant does possess.

(2) Where a claimant is treated as possessing any earnings under regulation 108(1) or (2) the foregoing provisions of this Part are to apply for the purposes of calculating the amount of those

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(111) Regulation 75(1)(a)(v) was added by regulation 5(a) of S.R. 2001 No. 151 and amended by regulation 2 of S.R. 2007 No. 262

(112) Regulation 19(3) was amended by regulation 3(2) of S.R. 1999 No. 501

earnings as if a payment had actually been made and as if they were actual earnings which the claimant does possess except that regulation 96(3) (calculation of net earnings of employed earners) does not apply and the claimant's net earnings are to be calculated by taking into account the earnings which the claimant is treated as possessing, less—

- (a) where the period over which those earnings are to be taken into account is a year or more, an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the starting rate or, as the case may be, the starting rate and the basic rate of tax in the year of assessment less only the personal allowance to which the claimant is entitled under section 257(1) of the Taxes Act(113) (personal allowance) as is appropriate to the claimant's circumstances;
- (b) where if the period over which those earnings are to be taken into account is less than a year, the earnings to which the starting rate of tax is to be applied and the amount of the personal allowance deductible under this paragraph is to be calculated on a pro rata basis;
- (c) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under section 6(1)(a) of the Contributions and Benefits Act, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act(114); and
- (d) one half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

(3) 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 paragraph (2) are to be such amounts as, in the opinion of the Department, would have been deducted had the claimant been employed in Northern Ireland.

## CHAPTER 7

### Capital

#### Capital limit

**110.** For the purposes of paragraph 6(1)(b) of Schedule 1 to the Act as it applies to an income-related allowance (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.

#### Calculation of capital

**111.—(1)** For the purposes of sections 1(2) and 4 of, and Part 2 of Schedule 1 to, the Act as it applies to an income-related allowance, the capital of a claimant to be taken into account is, subject to paragraph (2), to be the whole of the claimant's capital calculated in accordance with this Part and any income treated as capital under regulation 112 (income treated as capital).

(2) There is to be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 9 (capital to be disregarded).

#### Income treated as capital

**112.—(1)** Any bounty derived from employment to which regulation 43(1)(e) and paragraph 12 of Schedule 7 apply and paid at intervals of at least one year is to be treated as capital.

(113) Section 257 was substituted by section 33 of the Finance Act 1988 (c. 39) and amended by paragraph 29 of Schedule 1 to the Income Tax Act 2007 (c. 3) and Article 2(2) of S.I. 2006/3241

(114) Section 8 was substituted by section 1(2) of the National Insurance Contributions Act 2002

(2) Any amount by way of a refund of income tax paid in respect of, or deducted from, profits or income chargeable to—

- (a) tax under the provisions in Part 2 of the Income Tax (Trading and Other Income) Act 2005(115) or Part 2 of the Income Tax (Earnings and Pensions) Act 2003(116); or
- (b) tax under the legislation of the Republic of Ireland which is analogous to tax under those provisions,

is to be treated as capital.

(3) Any holiday pay which is not earnings under regulation 95(1)(d) (earnings of employed earners) is to be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 4 to 8, 10, 16 or 42 of Schedule 9, any income derived from capital is to 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 is to be treated as capital.

(6) Any payment made by the Secretary of State by way of an allowance to a prisoner on discharge is to be treated as capital.

(7) Any charitable or voluntary payment which is not made or not due to be made at regular intervals, other than one to which paragraph (8) applies, is to be treated as capital.

(8) This paragraph applies to 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 Fund (2006).

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

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

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

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

**114.** Capital which a claimant possesses in a country outside the United Kingdom is to be calculated—

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

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

### **Notional capital**

**115.—**(1) A claimant is to be treated as possessing capital of which the claimant has deprived himself for the purpose of securing entitlement to an employment and support allowance or

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(115) 2005 c. 5

(116) 2003 c. 1

increasing the amount of that allowance, or for the purpose of securing entitlement to, or increasing the amount of, income support or a jobseeker's allowance except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant;
  - (b) to the extent that the capital which the claimant is treated as possessing is reduced in accordance with regulation 116;
  - (c) any sum to which paragraph 42(2)(a) of Schedule 9 (capital to be disregarded) applies which is administered in the way referred to in paragraph 42(1)(a) of that Schedule.
- (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 obtainable only if secured against capital disregarded under Schedule 9;
  - (d) a personal pension scheme;
  - (e) an occupational pension scheme or a payment made by the Board of the Pension Protection Fund where the claimant is aged under 60; or
  - (f) any sum to which paragraph 42(2)(a) of Schedule 9 applies which is administered in a way referred to in paragraph 42(1)(a) of that Schedule,

any capital which would become available to the claimant upon application being made but which has not been acquired by the claimant is to 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) Any payment of capital, other than a payment of capital specified in paragraph (5), made to a third party in respect of a single claimant or the claimant's partner (but not a member of the third party's family) is to be treated—

- (a) in a case where that payment is derived from—
  - (i) a payment of any benefit under the benefit Acts,
  - (ii) a payment from the Armed Forces and Reserve Forces Compensation Scheme,
  - (iii) a war disablement pension, war widow's pension or war widower's pension, or
  - (iv) a pension payable to a person as a widow, widower or surviving civil partner under 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 who have died in consequence of service as members of the armed forces of the Crown,
 as possessed by that single claimant, if it is paid to that claimant, or by the claimant's partner, if it is paid to that partner;
- (b) in a case 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, as possessed by that single claimant or, as the case may be, by the claimant's partner;
- (c) in any other case, as possessed by that single claimant or the claimant's partner to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) and 68(1)(d) (housing costs) of that single claimant or, as the case may be, of the claimant's partner, or is used for any water charges for which that claimant or partner is liable.

(4) Any payment of capital, other than a payment of capital specified in paragraph (5) made to a single claimant or the claimant's partner in respect of a third party (but not in respect of another

member of the claimant's family) is to be treated as possessed by that single claimant or, as the case may be, the claimant's partner, to the extent that it is kept or used by that claimant or used by or on behalf of the claimant's partner.

- (5) Paragraphs (3) and (4) 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 Fund (2006), the Skipton Fund or the London Bombings Relief Charitable Fund;
  - (b) pursuant to section 1 of the Employment and Training Act in respect of a claimant's participation—
    - (i) in an employment programme specified in regulation 75(1)(a) of the Jobseeker's Allowance Regulations,
    - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations, or
    - (iii) in a qualifying course within the meaning of 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 head (i) and that person's partner (if any) does not possess, or is not treated as possessing, any other income apart from that payment.
- (6) 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, the claimant is to be treated as if that claimant were such sole owner or partner and in such a case—
- (a) the value of the claimant's holding in that company, notwithstanding regulation 111 (calculation of capital), is to be disregarded; and
  - (b) the claimant shall, subject to paragraph (7), be treated as possessing an amount of capital equal to the value or, as the case may be, the claimant's share of the value of the capital of that company and the foregoing provisions of this Chapter are to apply for the purposes of calculating that amount as if it were actual capital which the claimant does possess.
- (7) For so long as the claimant undertakes activities in the course of the business of the company, the amount which the claimant is treated as possessing under paragraph (6) is to be disregarded.
- (8) Where a claimant is treated as possessing capital under any of paragraphs (1) to (6), the foregoing provisions of this Chapter are to apply for the purposes of calculating its amount as if it were actual capital which the claimant does possess.
- (9) For the avoidance of doubt a claimant is to be treated as possessing capital under paragraph (1) only if the capital of which the claimant has deprived himself is actual capital.

### **Diminishing notional capital rule**

**116.—**(1) Where a claimant is treated as possessing capital under regulation 115(1) (notional capital), the amount which the claimant 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, is to be reduced by an amount determined under paragraph (2);
- (b) in the case of a week in respect of which sub-paragraph (a) does not apply but where—
  - (i) that week is a week subsequent to the relevant week, and
  - (ii) that relevant week is a week in which the condition in paragraph (3) is satisfied, is to be reduced by the amount determined under paragraph (3).
- (2) This paragraph applies to a benefit week or part-week where the claimant satisfies the conditions that—
  - (a) the claimant is in receipt of an income-related allowance; and
  - (b) but for regulation 115(1), the claimant would have received an additional amount of an income-related allowance in that benefit week or, as the case may be, that part-week, and in such a case, the amount of the reduction for the purposes of paragraph (1)(a) is to be equal to that additional amount.
- (3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to an income-related allowance in the relevant week, but for regulation 115(1), and in such a case the amount of the reduction is to be equal to the aggregate of—
  - (a) the amount of an income-related allowance to which the claimant would have been entitled in the relevant week but for regulation 115(1); and for the purposes of this sub-paragraph if the relevant week is a part-week that amount is to be determined by dividing the amount of an income-related allowance to which the claimant would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
  - (b) the amount of housing benefit (if any) equal to the difference between the claimant's maximum housing benefit and the amount (if any) of housing benefit which the claimant is awarded in respect of the benefit week, within the meaning of regulation 2(1) of the Housing Benefit Regulations (interpretation), which includes the last day of the relevant week.
- (4) The amount determined under paragraph (3) is to be re-determined under that paragraph if the claimant makes a further claim for an income-related allowance and the conditions in paragraph (5) are satisfied, and in such a case—
  - (a) sub-paragraphs (a) and (b) of paragraph (3) shall apply as if for “relevant week” there were substituted “relevant subsequent week”; and
  - (b) subject to paragraph (6), the amount as re-determined is to have effect from the first week following the relevant subsequent week in question.
- (5) The conditions are that—
  - (a) a further claim is made 26 or more weeks after—
    - (i) the date on which the claimant made a claim for an income-related allowance in respect of which the claimant was first treated as possessing the capital in question under regulation 115(1),
    - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which the claimant last made a claim for an income-related allowance which resulted in the weekly amount being re-determined, or
    - (iii) the date on which the claimant last ceased to be in receipt of an income-related allowance,

whichever last occurred; and

(b) the claimant would have been entitled to an income-related allowance but for regulation 115(1).

(6) The amount as re-determined pursuant to paragraph (4) is not to 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 is to continue to have effect.

(7) For the purposes of this regulation—

“part-week” means a period to which Part 14 (periods of less than a week) applies;

“relevant week” means the benefit week or part-week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 115(1)—

(a) was first taken into account for the purpose of determining the claimant’s entitlement to an income-related allowance, a jobseeker’s allowance or income support; or

(b) was taken into account on a subsequent occasion for the purpose of determining or re-determining the claimant’s entitlement to an income-related allowance, a jobseeker’s allowance or income support on that subsequent occasion and that determination or re-determination resulted in the claimant beginning to receive, or ceasing to receive, an income-related allowance, a jobseeker’s allowance or income support,

and where more than one benefit week or part-week is identified by reference to paragraphs (a) and (b) the later or latest such benefit week or, as the case may be, the later or latest such part-week;

“relevant subsequent week” means the benefit week or part-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**

**117.—**(1) Subject to paragraph (2), except where a claimant possesses capital which is disregarded under regulation 115(6) (notional capital), where a claimant and one or more persons are beneficially entitled in possession to any capital asset they are to 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 Chapter are to 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 are to 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**

**118.—**(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 is to be treated as equivalent to a weekly 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 the claimant and that claimant’s capital calculated in accordance with this Part exceeds £10,000, it is to be treated as equivalent to a weekly 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 lives permanently in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital.

(4) For the purposes of paragraph (3), a claimant is to be treated as living permanently in such home or hospital where the claimant is absent from a home or hospital referred to in that paragraph—

- (a) in the case of a claimant over pensionable age, for a period not exceeding 52 weeks; and
- (b) in any other case, for a period not exceeding 13 weeks.

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

(6) For the purposes of paragraphs (1) and (2), capital includes any income treated as capital under regulations 112 and 126 (income treated as capital and liable relative payments treated as capital).

## CHAPTER 8

### Liable relatives

#### Interpretation

**119.** In this Chapter—

“claimant” includes a young claimant;

“liable relative” means—

- (a) a spouse, former spouse, civil partner or former civil partner of a claimant or of a member of the claimant’s family;
- (b) a parent of a child or young person who is a member of the claimant’s family or of a young claimant;
- (c) a person who has not been adjudged to be the father of a child or young person who is a member of the claimant’s family or of a young claimant where that person is contributing towards the maintenance of that child, young person or young claimant and by reason of that contribution the claimant may reasonably be treated as the father of that child, young person or young claimant;
- (d) a person liable to maintain another person by virtue of section 74(6)(c) of the Administration Act (liability to maintain) where the latter is the claimant or a member of the claimant’s family,

and, in this definition, a reference to a child’s, young person’s or young claimant’s parent includes any person in relation to whom the child, young person or young claimant was treated as a child or a member of the family;

“payment” means a periodical payment or any other payment made by or derived from a liable relative including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by the claimant but only from the date on which it could be expected to be acquired were an application made; but it does not include any payment—

- (a) arising from a disposition of property made in contemplation of, or as a consequence of—
  - (i) an agreement to separate,
  - (ii) any proceedings for judicial separation, divorce or nullity of marriage, or
  - (iii) any proceedings for separation, dissolution or nullity in relation to a civil partnership;
- (b) made after the death of the liable relative;
- (c) made by way of a gift but not in aggregate or otherwise exceeding £250 in the period of 52 weeks beginning with the date on which the payment, or if there is more than one such payment the first payment, is made; and, in the case of a claimant who continues to be in receipt of an income-related allowance at the end of the period of 52 weeks, this

provision is to continue to apply thereafter with the modification that any subsequent period of 52 weeks is to begin with the first day of the benefit week in which the first payment is made after the end of the previous period of 52 weeks;

- (d) made—
  - (i) to a third party in respect of the claimant or a member of the claimant’s family, or
  - (ii) to the claimant or to a member of the claimant’s family in respect of a third party, where having regard to the purpose of the payment, the terms under which it is made and its amount it is unreasonable to take it into account;
- (e) in kind;
- (f) to, or in respect of, a child or young person who is to be treated as not being a member of the claimant’s household under regulation 156 (circumstances in which a person is to be treated as being or not being a member of the same household);
- (g) which is not a periodical payment, to the extent that any amount of that payment—
  - (i) has already been taken into account under this Part by virtue of a previous claim or determination,
  - (ii) has been recovered under section 72 of the Administration Act(117) (income support and other payments) or is currently being recovered, or
  - (iii) at the time the determination is made, has been used by the claimant except where the claimant has deprived himself of that amount for the purpose of securing entitlement to an income-related allowance or increasing the amount of that allowance;

“periodical payment” means—

- (a) a payment which is made or is due to be made at regular intervals in pursuance of a court order or agreement for maintenance;
- (b) in a case where the liable relative has established a pattern of making payments at regular intervals, any such payment;
- (c) any payment not exceeding the amount of an income-related allowance payable had that payment not been made;
- (d) any payment representing a commutation of payments to which paragraph (a) or (b) applies whether made in arrears or in advance,

but does not include a payment due to be made before the first benefit week pursuant to the claim which is not so made;

“young claimant” means a person aged 16 or over but under the age of 20 who makes a claim for an income-related allowance.

### **Treatment of liable relative payments**

**120.** Subject to regulation 121 and except where regulation 126(1) (liable relative payments to be treated as capital) applies, a payment—

- (a) to the extent that it is not a payment of income, is to be treated as income;
- (b) is to be taken into account in accordance with the following provisions of this Chapter.

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(117) Section 72 was amended by paragraph 33 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and paragraph 11 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.))

**Disregard of payments treated as not relevant income**

**121.** Where the Department treats any payment as not being relevant income for the purposes of section 72A of the Administration Act(118) (payment of benefit where maintenance payments collected by Department), that payment is to be disregarded in calculating a claimant's income.

**Period over which periodical payments are to be taken into account**

**122.—**(1) The period over which a periodical payment is to be taken into account is to be—

- (a) in a case where the payment is made at regular intervals, a period equal to the length of that interval;
- (b) in a case where the payment is due to be made at regular intervals but is not so made, such number of weeks as is equal to the number (and any fraction is to be treated as a corresponding fraction of a week) obtained by dividing the amount of that payment by the weekly amount of that periodical payment as calculated in accordance with regulation 124(4) (calculation of the weekly amount of a liable relative payment);
- (c) in any other case, a period equal to a week.

(2) The period under paragraph (1) is to begin on the date on which the payment is treated as paid under regulation 125 (date on which a liable relative payment is to be treated as paid).

**Period over which payments other than periodical payments are to be taken into account**

**123.—**(1) Subject to paragraph (2), the number of weeks over which a payment other than a periodical payment is to be taken into account is to be equal to the number (and any fraction is to be treated as a corresponding fraction of a week) obtained by dividing that payment by the aggregate of £2 and the amount of an income-related allowance which would be payable had the payment not been made.

(2) Where a liable relative makes a periodical payment and any other payment concurrently and the weekly amount of that periodical payment, as calculated in accordance with regulation 124 (calculation of the weekly amount of a liable relative payment), is less than the aggregate of £2 and the amount of an income-related allowance which would be payable had the payments not been made, that other payment, subject to paragraph (3), is to be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing that payment by an amount equal to the extent of the difference between the amount as calculated under this paragraph and the weekly amount of the periodical payment.

(3) If—

- (a) the liable relative ceases to make periodical payments, the balance (if any) of the other payment is to be taken into account over the number of weeks equal to the number (and any fraction is to be treated as a corresponding fraction of a week) obtained by dividing that balance by the amount referred to in paragraph (1);
- (b) the amount of any subsequent periodical payment varies, the balance (if any) of the other payment is to be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing that balance by an amount equal to the extent of the difference between the amount referred to in paragraph (2) and the weekly amount of the subsequent periodical payment.

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(118) Section 72A was inserted by Article 18 of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and amended by paragraph 112 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and paragraph 4(9) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.))

(4) The period under paragraph (1) or (2) is to begin on the date on which the payment is treated as paid under regulation 125 (date on which a liable relative payment is to be treated as paid) and under paragraph (3) is to begin on the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

#### **Calculation of the weekly amount of a liable relative payment**

**124.**—(1) Where a periodical payment is made or is due to be made at intervals of one week, the weekly amount is to be the amount of that payment.

(2) Where a periodical payment is made or is due to be made at intervals greater than one week and those intervals are monthly, the weekly amount is to be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(3) Where a periodical payment is made or is due to be made at intervals and those intervals are neither weekly nor monthly, the weekly amount is to be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(4) Where a payment is made and that payment represents a commutation of periodical payments whether in arrears or in advance, the weekly amount is to be the weekly amount of the individual periodical payments so commuted as calculated under paragraphs (1) to (3) as appropriate.

(5) The weekly amount of a payment to which regulation 123 (period over which payments other than periodical payments are to be taken into account) applies, is to be equal to the amount of the divisor used in calculating the period over which the payment or, as the case may be, the balance is to be taken into account.

#### **Date on which a liable relative payment is to be treated as paid**

**125.**—(1) A periodical payment is to be treated as paid—

- (a) in the case of a payment which is due to be made before the first benefit week pursuant to the claim, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid unless, having regard to the manner in which an income-related allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(2) Subject to paragraph (3), any other payment is to be treated as paid—

- (a) in the case of a payment which is made before the first benefit week pursuant to the claim, on the day in the week in which it is paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is paid unless, having regard to the manner in which an income-related allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(3) Any other payment paid on a date which falls within the period in respect of which a previous payment is taken into account, not being a periodical payment, is to be treated as paid on the first day following the end of that period.

#### **Liable relative payments to be treated as capital**

**126.**—(1) Subject to paragraph (2), where a liable relative makes a periodical payment concurrently with any other payment and the weekly amount of the periodical payment as calculated

in accordance with regulation 124(1) to (4) is equal to or greater than the amount referred to in regulation 123(2) less the £2 referred to therein, the other payment is to be treated as capital.

(2) If, in any case, the liable relative ceases to make periodical payments, the other payment to which paragraph (1) applies is to be taken into account under regulation 123(1) but, notwithstanding paragraph (4) of that regulation, the period over which the payment is to be taken into account is to begin on the first day of the benefit week following the last one in which a periodical payment was taken into account.

## CHAPTER 9

### Child support

#### **Treatment of child support maintenance**

**127.** Subject to regulation 130 (disregard of payments of child support maintenance treated as not relevant income), all payments of child support maintenance are, to the extent that they are not payments of income, to be treated as income and are to be taken into account on a weekly basis in accordance with the following provisions of this Chapter.

#### **Calculation of the weekly amount of payments of child support maintenance**

**128.—**(1) The weekly amount of child support maintenance is to be determined in accordance with the following provisions of this regulation.

(2) Where payments of child support maintenance are made weekly, the weekly amount is to be the amount of that payment.

(3) Where payments of child support maintenance are made monthly, the weekly amount is to be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(4) Where payments of child support maintenance are made at intervals and those intervals are not a week or a month, the weekly amount is to be determined by dividing those payments by the number equal to the number of weeks (including any part of a week) in that interval.

(5) Where a payment is made and that payment represents a commutation of child support maintenance the weekly amount is to be the weekly amount of the individual child support maintenance payments so commuted as calculated in accordance with paragraphs (2) to (4) as appropriate.

(6) Paragraph (2), (3) or, as the case may be, (4) is to apply to any payments made at the intervals specified in that paragraph whether or not—

- (a) the amount paid is in accordance with the maintenance assessment or the maintenance calculation, as the case may be; and
- (b) the intervals at which the payments are made are in accordance with the intervals specified by the Department under regulation 4 of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992(**119**).

#### **Date on which child support maintenance is to be treated as paid**

**129.—**(1) Subject to paragraph (2), a payment of child support maintenance is to be treated as paid—

- (a) subject to sub-paragraph (b), in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;

- (b) in the case of any amount of a payment which represents arrears of maintenance for a week prior to the first benefit week pursuant to a claim, on the day of the week in which it became due which corresponds to the first day of the benefit week;
- (c) in any other case, on the first day of the benefit week in which it is due to be paid or the first day of the first succeeding benefit week in which it is practicable to take it into account.

(2) Where a payment to which paragraph (1)(c) refers is made to the Department and then transmitted to the claimant entitled to receive it, the payment is to be treated as paid on the first day of the benefit week in which it is transmitted or, where it is not practicable to take it into account in that week, the first day of the first succeeding benefit week in which it is practicable to take the payment into account.

### **Disregard of payments of child support maintenance treated as not relevant income**

**130.** Where the Department treats any payment of child support maintenance as not being relevant income for the purposes of section 72A of the Administration Act (payment of benefit where maintenance payments collected by Department), that payment is to be disregarded in calculating a claimant's income.

## CHAPTER 10

### Students

#### **Interpretation**

**131.**—(1) In this Chapter—

“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 is to 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(**120**), or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997(**121**) in each case being grants, or grants, loans or other payments, as the case may be, made for the purpose of assisting students in financial difficulties;
- (b) grants made under section 68 of the Further and Higher Education Act 1992(**122**) 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(**123**);
- (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

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(120) S.I. 1993/2810 (N.I. 12); Article 30 was amended by Schedule 4 to the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)) and Article 11(2) of the Colleges of Education (Northern Ireland) Order 2005 (S.I. 2005/1963 (N.I. 13))

(121) S.I. 1997/1772 (N.I. 15)

(122) 1992 c. 13

(123) 1980 c. 44; section 74(1) was amended by paragraph 8(17) of Schedule 10 to the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39)

and Skills Council for England under sections 5, 6 and 9 of the Learning and Skills Act 2000<sup>(124)</sup>; or

(e) Financial Contingency Funds made available by the Welsh Ministers;

“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 Education (Scotland) Act 1980, the Scottish Ministers or education authority take 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 advanced education” means—

- (a) a course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education or a higher national diploma; or
- (b) any other course which is of a standard above advanced GNVQ, or equivalent, including a course which is of a standard above a general certificate of education (advanced level), a Scottish national qualification (higher or advanced higher);

“covenant income” means the income payable to a student under a Deed of Covenant by a person whose income is, or is likely to be, taken into account in assessing the student’s grant or award;

“education authority” means a government department, an education and library board established under Article 3 of the Education and Libraries Order<sup>(125)</sup>, a local education authority as defined in section 212(1) of the Education Act 2002<sup>(126)</sup>, an education authority as defined in section 123 of the Local Government (Scotland) Act 1973<sup>(127)</sup>, any body which is a research council for the purposes of the Science and Technology Act 1965<sup>(128)</sup> 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” means a person who is not a qualifying young person or child within the meaning of section 138 of the Contributions and Benefits Act<sup>(129)</sup> (child and qualifying young person) and who is—

- (a) aged less than 19 and is attending or undertaking a full-time course of advanced education;
- (b) aged 19 or over but under pensionable age and is attending or undertaking a full-time course of study at an educational establishment; or
- (c) 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 13 of Schedule 8 or paragraph 48 of Schedule 9 applies;

“grant income” means—

<sup>(124)</sup>2000 c. 21; section 5 was amended by section 178(2) of the Education Act 2002 (c. 32), section 6 was amended by section 34(7) of the Special Educational Needs and Disability Act 2001 (c. 10) and section 9 was amended by section 176(2) of the Education and Inspections Act 2006 (c. 40)

<sup>(125)</sup>Article 3 was amended by Schedule 9 to the Education Reform (Northern Ireland) Order 1989 (N.I. 20)

<sup>(126)</sup>2002 c. 32

<sup>(127)</sup>1973 c. 65; section 123 was substituted by paragraph 92(28) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c. 39)

<sup>(128)</sup>1965 c. 4

<sup>(129)</sup>Section 138 was substituted by section 2(2) the Child Benefit Act 2005 (c. 6)

- (a) any income by way of a grant;
- (b) in the case of a student, other than one to whom paragraph (c) refers, any contribution which has been assessed whether or not it has been paid;
- (c) in the case of a student who is a lone parent or is a person to whom Part 4 applies, any contribution which has been assessed and which has been paid,

and any such contribution which is paid by way of a covenant is to be treated as part of the student's grant income;

“period of experience” means a period of work experience which forms part of a sandwich course;

“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) the day before the start of the next year of the course in a case where the student's grant or loan is assessed at a rate appropriate to the student's studying throughout the year or, if the claimant does not have a grant or loan, where a loan would have been assessed at such a rate had the claimant had one, or
  - (ii) in any other case the day before the start of the normal summer vacation appropriate to the student's 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;

“sandwich course” has the meaning given by regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007(**130**), regulation 2(9) of the Education (Student Support) Regulations 2008(**131**) or regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007(**132**);

“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(**133**) for such a student;
- (b) except where paragraph (c) applies, in the case of a student residing at the student's parent's home, the amount specified in paragraph 3 of Schedule 6 to the Students Awards Regulations;
- (c) in the case of a student receiving an allowance or bursary under the Education (Scotland) Act 1980, the amount of money specified 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, or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority;

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(130) S.R. 2007 No. 195

(131) S.I. 2008/529

(132) S.S.I. 2007/154

(133) The amounts in Schedule 6 are amended by the Schedule to S.R 2008 No. 254

- (d) in any other case, the amount specified in paragraph 2(2) of Schedule 6 to the Students Awards Regulations other than in head (a) or (b) of that sub-paragraph;
- “student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking a course of study at an educational establishment;
- “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(134), section 22 of the Teaching and Higher Education Act 1998(135) or sections 73(f), 73B and 74 of the Education (Scotland) Act 1980(136) and is to include, in Scotland, amounts paid under regulation 4(1)(c) of the Students’ Allowances (Scotland) Regulations 2007(137).
- (2) For the purposes of the definition of “full-time student” in paragraph (1), a person is to be regarded as attending or, as the case may be, undertaking a full-time course of study, a full-time course of advanced education 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 the claimant 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 the claimant finally abandons the course or is dismissed from it;
- (b) in any other case, throughout the period beginning on the date on which the claimant starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as the claimant finally abandons it or is dismissed from it.
- (3) For the purpose of sub-paragraph (a) of paragraph (2), the period referred to in that sub-paragraph is to include—
- (a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the claimant was attending or undertaking a part of the course as a full-time course of study, any period in respect of which the claimant 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 the claimant 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.

(134) S.I. 1998/1760 (N.I. 14); Article 3 was amended by section 147(3) of the Learning and Skills Act 2000 (c. 21), paragraph 238 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 147(4) of the Finance Act 2003 (c. 14) and Article 11(1) of the Higher Education (Northern Ireland) Order 2005 (S.I. 2005/1116 (N.I. 5))

(135) 1998 c. 30; section 22 was amended by section 146(2) of the Learning and Skills Act 2000

(136) 1980 c.44; section 73(f) was amended by section 29(1) of the Teaching and Higher Education Act 1998 (c. 30) and section 3(2) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 73B was inserted by section 29(2) of the Teaching and Higher Education Act 1998 and amended by section 3(3) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 and section 74 was amended by paragraph 8(17) of Schedule 10 to the Self-Governing Schools etc. (Scotland) Act 1989

(137) S.I. 2007/153

### Calculation of grant income

**132.**—(1) The amount of student's grant income to be taken into account, subject to paragraphs (2) and (3), is to be the whole of the student's grant income.

(2) There is to be disregarded from the amount of a student's grant income any payment—

- (a) intended to meet tuition fees or examination fees;
- (b) intended to meet additional expenditure incurred by a disabled student in respect of that student's attendance on a course;
- (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 the student resides while attending the course but only to the extent that the student's rent or rates are not met by housing benefit;
- (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 that person;
- (f) intended to meet the cost of books and equipment;
- (g) intended to meet travel expenses incurred as a result of the student's attendance on the course;
- (h) intended for the maintenance of a child dependant;
- (i) 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 is to be excluded from the student's grant income—

- (a) the sum of £290 per academic year in respect of travel costs; and
- (b) the sum of £370 per academic year towards the costs of books and equipment,

whether or not any such costs are incurred.

(4) Subject to paragraph (6), a student's grant income, except any amount intended for the maintenance of adult dependants under Part 3 of Schedule 6 to the Students Awards Regulations, is to be apportioned—

- (a) subject to paragraph (7), 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.

(5) Any grant in respect of an adult dependant paid under Article 44(2) of the Health and Personal Social Services Order (provisions relating to training) and any amount intended for the maintenance of an adult dependant under the provisions referred to in paragraph (4) is to be apportioned equally over a period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53 weeks.

(6) In a case where a student is in receipt of a student loan or where that student could have acquired a student loan by taking reasonable steps but had not done so, any amount intended for the maintenance of an adult dependant under provisions other than those referred to in paragraph (4) is to be apportioned over the same period as the student's loan is apportioned or, as the case may be, would have been apportioned.

(7) In the case of a student on a sandwich course, any period of experience within the period of study is to be excluded and the student's grant income is to 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**

**133.**—(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 the student's covenant income to be taken into account for that period and any summer vacation immediately following is to be the whole amount of the student's covenant income less, subject to paragraph (3), the amount of the contribution.

(2) The weekly amount of the student's covenant income is to be determined—

- (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53; and
- (b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution is to be treated as increased by the amount, if any, by which the amount excluded under regulation 132(2)(g) falls short of the amount for the time being specified in paragraph 7(2) of Schedule 6 to the Students Awards Regulations (travel expenditure).

#### **Calculation of covenant income where no grant income or no contribution is assessed**

**134.**—(1) Where a student is not in receipt of income by way of a grant the amount of the student's covenant income is to be calculated as follows—

- (a) any sums intended for any expenditure specified in regulation 132(2)(a) to (e), necessary as a result of the student's attendance on the course, are to be disregarded;
- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded is to be apportioned equally between the weeks of the period of study and there is to be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under regulation 132(2)(f) and (g) and (3) had the student been in receipt of the standard maintenance grant;
- (c) the balance, if any, is to be divided by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53 and treated as weekly income of which £5 is to 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 the student's covenant income is to be calculated in accordance with paragraph (1), except that—

- (a) the value of the standard maintenance grant is to be abated by the amount of the student's grant income less an amount equal to the amount of any sums disregarded under regulation 132(2)(a) to (e); and
- (b) the amount to be disregarded under paragraph (1)(b) is to be abated by an amount equal to the amount of any sums disregarded under regulation 132(2)(f) and (g) and (3).

#### **Relationship with amounts to be disregarded under Schedule 8**

**135.** No part of a student's covenant income or grant income is to be disregarded under paragraph 15 of Schedule 8 (charitable and voluntary payments).

### Other amounts to be disregarded

**136.**—(1) For the purposes of ascertaining income other than grant income, covenant income and loans treated as income in accordance with regulation 137, any amounts intended for any expenditure specified in regulation 132(2) necessary as a result of the student’s attendance on the course is to 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 regulations 132(2) and (3), 133(3), 134(1)(a) or (b) and 137(6) on like expenditure.

(2) Where a claim is made in respect of any period in the normal summer vacation and any income is payable under a Deed of Covenant which commences or takes effect after the first day of that vacation, that income is to be disregarded.

### Treatment of student loans

**137.**—(1) A student loan is to be treated as income unless it is a specified loan or award in which case it is to be disregarded.

(2) For the purposes of paragraph (1), a “specified loan or award” means—

- (a) an award made by the Department for Employment and Learning under Article 51 of the Education and Libraries Order(138);
- (b) a loan made by the Higher Education Funding Council for England or the Higher Education Funding Council for Wales under section 65 of the Further and Higher Education Act 1992(139);
- (c) a loan made by an educational institution from funds it has received under the Education (Access Funds) (Scotland) Regulations 1990(140).

(3) 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 is to 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 is to 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;
- (c) for the purposes of sub-paragraph (b), “quarter” has the meaning given by regulation 104(6) (calculation of income other than earnings);

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(138) Article 51 was substituted by Part 2 of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1))

(139) 1992 c. 13; section 65 was amended by section 27 of the Teaching and Higher Education Act 1998

(140) S.I. 1990/1534 (S. 157)

- (d) 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 is to 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;
- (e) in any other case, the loan is to 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 is to be disregarded £10.
- (4) A student is to be treated as possessing a student loan in respect of an academic year where—
- (a) a student loan has been made to that student in respect of that year; or
  - (b) the student could acquire such a loan in respect of that year by taking reasonable steps to do so.
- (5) Where a student is treated as possessing a student loan under paragraph (4), the amount of the student loan to be taken into account as income is to be, subject to paragraph (6)—
- (a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to the maximum student loan the student is able to acquire in respect of that year by taking reasonable steps to do so and either—
    - (i) in the case of a student other than one to whom head (ii) refers, any contribution whether or not it has been paid to that student, or
    - (ii) in the case of a student who is entitled to an income-related allowance by virtue of being a student to whom regulation 18 (circumstances in which the condition that the claimant is not receiving education does not apply) applies;
  - (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) the student took all reasonable steps to obtain the maximum student loan that student 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.
- (6) There is to be deducted from the amount of income taken into account under paragraph (5)—
- (a) the sum of £290 per academic year in respect of travel costs; and
  - (b) the sum of £370 per academic year towards the costs of books and equipment,
- whether or not any such costs are incurred.

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

**138.**—(1) This regulation applies to payments from access funds that are not payments to which regulation 142(2) or (3) (further income treated as capital) applies.

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

(3) Subject to paragraph (4) and paragraph 38 of Schedule 8, any payments from access funds which are intended and used for food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d) (housing costs), of a single claimant or, as the case may be, of the claimant's partner, and any payments from access funds which are used for any water charges for which that claimant or partner is liable is to be disregarded as income to the extent of £20 per week.

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

(a) on or after 1st September or the first day of the course, whichever first occurs, but before receipt of any student loan in respect of 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 is to be disregarded as income.

### **Treatment of fee loans**

**139.** 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, is to be disregarded as income.

### **Disregard of contribution**

**140.** Where the claimant or the claimant's 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 is to be disregarded for the purposes of assessing that other partner's income.

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

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

### **Student's income treated as capital**

**142.—(1)** Any amount by way of a refund of tax deducted from a student's income is to be treated as capital.

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

(3) An amount paid from access funds as a single lump sum which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d), of a single claimant or, as the case may be, of the claimant's partner, or which is used for an item other than any water charges for which that claimant or partner is liable, is to be disregarded as capital but only for a period of 52 weeks from the date of the payment.

**Disregard of changes occurring during summer vacation**

**143.** In calculating a student's income there is to be disregarded 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 the student's period of study, from the date on which the change occurred up to the end of that vacation.

**PART 11****SUPPLEMENTARY PROVISIONS****CHAPTER 1****Miscellaneous****Waiting days**

**144.**—(1) A claimant is not entitled to an employment and support allowance in respect of 3 days at the beginning of a period of limited capability for work.

(2) Paragraph (1) does not apply where—

- (a) the claimant's entitlement to an employment and support allowance commences within 12 weeks of the claimant's entitlement to income support, state pension credit, a jobseeker's allowance, a carer's allowance or statutory sick pay coming to an end;
- (b) the claimant is terminally ill and has—
  - (i) made a claim expressly on the ground of being terminally ill, or
  - (ii) made an application for supersession or revision in accordance with the Decisions and Appeals Regulations which contains an express statement of being terminally ill; or
- (c) the claimant has been discharged from being a member of Her Majesty's forces and 3 or more days immediately before that discharge were days of sickness absence from duty, which are recorded by the Secretary of State for Defence.

**Linking rules**

**145.**—(1) Any period of limited capability for work which is separated from another such period by not more than 12 weeks is to be treated as a continuation of the earlier period.

(2) Where the claimant is a work or training beneficiary in accordance with regulation 148, any period of limited capability for work which is separated from another such period by not more than 104 weeks is to be treated as a continuation of the earlier period.

(3) Where the claimant claims an employment and support allowance after ceasing to be in qualifying remunerative work and—

- (a) the period of limited capability for work began on the day immediately after the day on which the claimant so ceased;
- (b) the claimant has been entitled to an employment and support allowance within the period of 104 weeks before the beginning of that period of limited capability for work; and
- (c) the claimant satisfied the relevant tax credit conditions set out in paragraph (4) on the day before so ceasing,

the claimant is to be treated for the purposes of the claim as having had limited capability for work throughout the period during which those conditions were satisfied.

- (4) A claimant satisfies the relevant tax credit conditions on a day if—
  - (a) the claimant is entitled for the day to the disability element of working tax credit (on a claim made by the claimant or by the claimant jointly with another) or would be so entitled but for the fact that the relevant income (within the meaning of Part 1 of the Tax Credits Act) in the case of the claimant or the claimant and another is such that that person is not so entitled; and
  - (b) either working tax credit or any element of child tax credit other than the family element is paid in respect of the day on such a claim.
- (5) Where a claim for an employment and support allowance is made after the claimant ceases to be engaged in training and—
  - (a) that claimant was entitled to an employment and support allowance within the period of 8 weeks immediately before becoming so engaged;
  - (b) that claimant has limited capability for work on the day after ceasing to be so engaged; and
  - (c) that day falls not later than the end of the period of 104 weeks beginning with the end of the last week for which the claimant was entitled to an employment and support allowance,the claimant is to be treated, for the purposes of the claim, as having had limited capability for work for the period when so engaged in training.

#### **Advance awards**

- 146.**—(1) Where section 5 of the Act (advance award of income-related allowance) applies to a claim and the claimant satisfies the conditions in paragraph (2)—
- (a) the claim is to be treated as if made for a period from the relevant day; and
  - (b) the Department may award an employment and support allowance from the relevant day.
- (2) The conditions are that—
- (a) the Department is of the opinion that unless there is a change of circumstances the claimant will satisfy the conditions set out in section 1(3)(b) to (f) of, and Part 2 of Schedule 1 to, the Act when an income-related allowance becomes payable under the award; and
  - (b) the claimant is treated as having limited capability for work in accordance with regulation 20, 25, 26, 29 or 33(2) for the period before an income-related allowance becomes payable under the award.
- (3) Where an award is made under paragraph (1)—
- (a) the award for an employment and support allowance shall become payable on the date on which the claimant would have been entitled to a main phase employment and support allowance if the claimant had satisfied the condition in paragraph 6(1)(a) of Schedule 1 to the Act before the relevant day;
  - (b) section 4(4)(a) or (5)(a) of the Act does not apply to that award.
- (4) In this regulation the “relevant day” is the day after the end of a period of 13 weeks beginning on the first day on which the claimant would be entitled to an income-related allowance if the claimant satisfied the condition in paragraph 6(1)(a) of Schedule 1 to the Act.

#### **Recovery orders**

- 147.**—(1) Where an award of income-related allowance has been made to a claimant, the Department may apply to the court for a recovery order against the claimant’s partner.

(2) On making a recovery order the court may order the partner to pay such amount at such intervals as it considers appropriate, having regard to all the circumstances of the partner and, in particular, the partner's income.

(3) A recovery order is to be treated for all purposes as if it were a maintenance order within the meaning of Article 85(15) of the Magistrates' Courts (Northern Ireland) Order 1981(141).

(4) Where a recovery order requires the partner to make payments to the Department, the Department may, by giving notice in writing to the court which made the order, the liable person and the claimant, transfer to the claimant the right to receive payments under the order and to exercise the relevant rights in relation to the order.

(5) In paragraph 4 the "relevant rights" means, in relation to a recovery order, the right to bring any proceedings, take any steps or do any other thing under or in relation to the order.

## CHAPTER 2

### Work or training beneficiaries

#### Work or training beneficiaries

**148.**—(1) Subject to paragraph (2), a claimant is a "work or training beneficiary" on any day in a linking term where the claimant—

- (a) had limited capability for work for more than 13 weeks in the most recent past period of limited capability for work;
- (b) ceased to be entitled to an allowance or advantage at the end of that most recent past period of limited capability for work; and
- (c) became engaged in work or training within one month of so ceasing to be entitled to that benefit at the end of that most recent past period of limited capability for work.

(2) A claimant is not a work or training beneficiary if—

- (a) the most recent past period of limited capability for work was ended by a determination that the claimant did not have limited capability for work; and
- (b) that determination was on the basis of a limited capability for work assessment.

(3) For the purposes of this Part—

"allowance or advantage" means any allowance or advantage under the Act or the Contributions and Benefits Act for which entitlement is dependent on limited capability for work;

"linking term" means a period of 104 weeks from the first day immediately following the last day in a period of limited capability for work;

"work" means work, other than work under regulation 45 (exempt work), for which payment is made or which is done in expectation of payment.

#### Linking rules – limited capability for work

**149.**—(1) Where the circumstances in paragraph (2) apply, a work or training beneficiary is to be treated as having limited capability for work for a period of 13 weeks beginning on the day within the linking term on which the work or training beneficiary claims an employment and support allowance.

(2) The circumstances are that—

- (a) the work or training beneficiary provides evidence of limited capability for work in accordance with the Medical Evidence Regulations (which prescribe the form of the doctor's statement or other evidence required in each case); and
- (b) in the most recent past period of limited capability for work, it had been determined that the work or training beneficiary had limited capability for work—
  - (i) the claimant having been assessed in accordance with a limited capability for work assessment, or
  - (ii) as a result of the claimant being treated as having limited capability for work in accordance with regulation 20, 25, 26, 29 or 33(2).

### **Linking rules – limited capability for work-related activity**

**150.** Where a work or training beneficiary was a member of the support group when the most recent past period of limited capability for work came to an end, that work or training beneficiary is to be treated as having limited capability for work-related activity for a period of 13 weeks beginning on the day within the linking term on which a claim for an employment and support allowance is made.

## CHAPTER 3

### Temporary absence from Northern Ireland

#### **Absence from Northern Ireland**

**151.—(1)** A claimant who is entitled to an employment and support allowance is to continue to be so entitled during a period of temporary absence from Northern Ireland only in accordance with this Chapter.

(2) A claimant who continues to be entitled to a contributory allowance during a period of temporary absence shall not be disqualified for receiving that allowance during that period under section 18(4) of the Act.

#### **Short absence**

**152.** A claimant is to continue to be entitled to an employment and support allowance during the first 4 weeks of a temporary absence from Northern Ireland if—

- (a) the period of absence is unlikely to exceed 52 weeks; and
- (b) while absent from Northern Ireland, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance.

#### **Absence to receive medical treatment**

**153.—(1)** A claimant is to continue to be entitled to an employment and support allowance during the first 26 weeks of a temporary absence from Northern Ireland if—

- (a) the period of absence is unlikely to exceed 52 weeks;
- (b) while absent from Northern Ireland, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance;
- (c) the claimant is absent from Northern Ireland solely—
  - (i) in connection with arrangements made for the treatment of the claimant for a disease or bodily or mental disablement directly related to the claimant's limited capability for work which commenced before leaving Northern Ireland, or

- (ii) because the claimant is accompanying a dependent child in connection with arrangements made for the treatment of that child for a disease or bodily or mental disablement;
- (d) those arrangements relate to treatment—
  - (i) outside Northern Ireland,
  - (ii) during the period whilst the claimant is temporarily absent from Northern Ireland, and
  - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment; and
- (e) before leaving Northern Ireland the claimant sought and received the permission of the Department to do so.

(2) In paragraph (1)(d)(iii) “appropriately qualified” means qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

#### **Absence in order to receive health service treatment**

**154.** A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Northern Ireland if—

- (a) while absent from Northern Ireland, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance;
- (b) that period of temporary absence is for the purpose of the claimant receiving treatment at a hospital or other institution outside Northern Ireland where the treatment is being provided—
  - (i) under Article 5, 7 or 8 of the Health and Personal Social Services Order(142) (provision of accommodation and medical services, etc.; prevention of illness, care and after-care; care of mothers and young children),
  - (ii) pursuant to arrangements made under Article 14A of that Order(143) (arrangements for provision of health services by other bodies or persons), or
  - (iii) pursuant to arrangements made under paragraph 13 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991(144) (Health and Social Services trusts: specific powers); and
- (c) before leaving Northern Ireland the claimant sought and received the permission of the Department to do so.

#### **Absence of member of family of member of Her Majesty’s forces**

**155.—(1)** A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Northern Ireland if—

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(142) Article 5 was amended by Schedule 6 to the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)) Schedule 5 to the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) and paragraph 3 of Schedule 1 to the Primary Medical Services (Northern Ireland) Order 2004 (S.I. 2004/311 (N.I. 2)) and Article 7 was amended by section 121(1) of the Immigration and Asylum Act 1999 (c. 33) and section 46(6) of the Nationality, Immigration and Asylum Act 2002 (c. 41)

(143) Article 14A was inserted by paragraph 2(1) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20))

(144) S.I. 1991/194 (N.I. 1); paragraph 13 was amended by Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2))

- (a) the claimant is a member of the family of a member of Her Majesty's forces and temporarily absent from Northern Ireland by reason only of the fact that the claimant is living with that member; and
- (b) before leaving Northern Ireland the claimant sought and received the permission of the Department to do so.

(2) In this regulation "member of the family of a member of Her Majesty's forces" means the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of such a member.

## CHAPTER 4

### Membership of household

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

**156.**—(1) Subject to the following provisions of this regulation—

- (a) the claimant and the claimant's partner; and
- (b) where the claimant or the claimant's partner is responsible for a child or young person, that child or young person and any child of that child or young person,

are to be treated as being members of the same household.

(2) Paragraph (1) applies even where any of them is temporarily living away from the other members of the family.

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

- (a) that person does not intend to resume living with the other members of the family; or
- (b) that person's absence from the other members of the 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 absence) and the absence is unlikely to be substantially more than 52 weeks.

(4) Paragraph (1) does not apply in respect of any member of a couple or of a polygamous marriage where—

- (a) one, both or all of them are patients detained in accommodation provided under Article 110 of the Mental Health Order;
- (b) one, both or all of them are—
  - (i) detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court, or
  - (ii) on temporary release in accordance with the provisions of the Prison Act (Northern Ireland) 1953(145);
- (c) the claimant is abroad and does not satisfy the conditions of Chapter 3 (temporary absence from Northern Ireland); or
- (d) any one of them is permanently residing in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital.

(5) A child or young person is not to be treated as a member of the claimant's household where that child or young person is—

- (a) placed with the claimant or the claimant’s partner by an authority under Article 27(2)(a) of the Children Order or by a voluntary organisation under Article 75(1)(a) of that Order;
  - (b) placed with the claimant or the claimant’s partner prior to adoption; or
  - (c) placed for adoption with the claimant or the claimant’s partner pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989(146).
- (6) Subject to paragraphs (7) and (8), paragraph (1) does not apply to a child or young person who is not living with the claimant and who—
- (a) in a case which does not fall within sub-paragraph (b), has been continuously absent from Northern Ireland for a period of more than 4 weeks commencing—
    - (i) where that child or young person went abroad before the date of the claim for an employment and support allowance, on the date of that claim,
    - (ii) in any other case, on the day which immediately follows the day on which that child or young person went abroad;
  - (b) where regulation 153 (absence to receive medical treatment) applies, has been continuously absent from Northern Ireland for a period of more than 26 weeks, that period commencing—
    - (i) where that child or young person went abroad before the date of the claim for an employment and support allowance, on the date of that claim,
    - (ii) in any other case, on the day which immediately follows the day on which that child or young person went abroad;
  - (c) has been an in-patient or in accommodation for a continuous period of more than 12 weeks commencing—
    - (i) where that child or young person became an in-patient or, as the case may be, entered that accommodation, before the date of the claim for an employment and support allowance, with that date, or
    - (ii) in any other case, with the date on which that child or young person became an in-patient or entered that accommodation,

and, in either case, has not been in regular contact with either the claimant or any member of the claimant’s household;
  - (d) is being looked after by an authority under a relevant enactment;
  - (e) has been placed with a person other than the claimant prior to adoption;
  - (f) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989; or
  - (g) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court.
- (7) Paragraph (6)(a)(i), (b)(i) and (c)(i) does not apply in a case where immediately before the date of claim for an employment and support allowance the claimant was entitled to an income-based jobseeker’s allowance or income support.
- (8) A child or young person to whom any of the circumstances mentioned in paragraph (6)(d) or (h) applies is to be treated as being a member of the claimant’s household only for that part of any benefit week where that child or young person lives with the claimant.
- (9) In this regulation—
- “accommodation” means accommodation provided or arranged by the Department of Health, Social Services and Public Safety under Article 15 or 36 of the Health and Personal Social

Services Order in a home owned or managed by a Health and Social Services Board or a Health and Social Services trust where the accommodation is provided for a person whose stay in that accommodation has become other than temporary;

“authority” has the meaning given by Article 2 of the Children Order;

“relevant enactment” means the Army Act 1955(**147**), the Air Force Act 1955(**148**), the Naval Discipline Act 1957(**149**), the Children and Young Persons Act (Northern Ireland) 1968(**150**), the Health and Personal Social Services Order, the Family Law Reform (Northern Ireland) Order 1977(**151**), the Matrimonial Causes (Northern Ireland) Order 1978(**152**), the Domestic Proceedings (Northern Ireland) Order 1980(**153**), the Adoption (Northern Ireland) Order 1987(**154**) and the Children Order.

(10) For the purposes of these Regulations a person is responsible for a child or young person if that child or young person usually lives with that person.

## PART 12

### DISQUALIFICATION

#### **Disqualification for misconduct, etc.**

**157.**—(1) Subject to paragraph (3), paragraph (2) applies where a claimant—

- (a) has limited capability for work through the claimant’s own misconduct, except in a case where the limited capability is due to pregnancy or a sexually transmitted disease;
- (b) fails without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or major surgery) recommended by a doctor with whom, or a hospital or similar institution with which, the claimant is undergoing medical treatment, which would be likely to remove the limitation on the claimant’s capability for work;
- (c) fails without good cause to refrain from behaviour calculated to retard the claimant’s recovery; or
- (d) is, without good cause, absent from the claimant’s place of residence without leaving word with the Department where the claimant may be found.

(2) A claimant referred to in paragraph (1) is to be disqualified for receiving an employment and support allowance for such period not exceeding 6 weeks as the Department may determine.

(3) Paragraph (2) does not apply where the claimant is—

- (a) disqualified for receiving an employment and support allowance by virtue of regulations made under section 6 of the Social Security Fraud Act (Northern Ireland) 2001(**155**) (loss of benefit for commission of benefit offences); or
- (b) a person in hardship.

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(**147**) 1955 c. 18

(**148**) 1955 c. 19

(**149**) 1957 c. 53

(**150**) 1968 c. 34 (N.I.)

(**151**) S.I. 1977/1250 (N.I. 17)

(**152**) S.I. 1978/1045 (N.I. 15)

(**153**) S.I. 1980/563 (N.I. 5)

(**154**) S.I. 1987/2203 (N.I. 22)

(**155**) 2001 c. 17(N.I.); section 6 was amended by Schedule 6 to the Tax Credits Act 2002 (c. 21), paragraph 33 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)) and section 45(1) of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.))

**Meaning of “person in hardship”**

- 158.**—(1) A claimant is a person in hardship if the claimant—
- (a) has informed the Department of the circumstances on which the claimant relies to establish that fact; and
  - (b) falls within paragraph (2), (3) or (5).
- (2) A claimant falls within this paragraph if—
- (a) she is pregnant;
  - (b) a member of the claimant’s family is pregnant;
  - (c) the claimant is a single claimant aged less than 18; or
  - (d) the claimant is a member of a couple and both members are aged less than 18.
- (3) Subject to paragraph (4), the claimant falls within this paragraph if the claimant or the claimant’s partner—
- (a) is responsible for a child or young person who is a member of the claimant’s household;
  - (b) has been awarded an attendance allowance or the care component;
  - (c) has claimed either attendance allowance or disability living allowance and the claim has not been determined;
  - (d) devotes a considerable portion of each week to caring for another person who—
    - (i) has been awarded an attendance allowance or the care component, or
    - (ii) has claimed either attendance allowance or disability living allowance and the claim has not been determined; or
  - (e) is aged 60 or more.
- (4) A claimant to whom paragraph (3)(c) or (d)(ii) applies is a person in hardship only for 26 weeks from the date of the claim unless the claimant is a person in hardship under another provision of this regulation.
- (5) The claimant falls within this paragraph where the Department is satisfied, having regard to all the circumstances and, in particular, the matters set out in paragraph (6), that unless an employment and support allowance is paid, the claimant, or a member of the claimant’s family, will suffer hardship.
- (6) The matters referred to in paragraph (5) are—
- (a) the resources which are likely to be available to the claimant and the claimant’s family and the length of time for which they might be available; and
  - (b) whether there is a substantial risk that essential items, including food, clothing and heating, will cease to be available to the claimant or a member of the claimant’s family, or will be available at considerably reduced levels and the length of time for which this might be so.
- (7) In this regulation “care component” means the care component of disability living allowance at the highest or middle rate prescribed under section 72(3) of the Contributions and Benefits Act.

**Treating a claimant as not having limited capability for work**

- 159.**—(1) Subject to paragraph (2), the claimant is to be treated as not having limited capability for work if the claimant is disqualified for receiving a contributory allowance during a period of imprisonment or detention in legal custody if that disqualification is for more than 6 weeks.
- (2) Where the claimant is entitled to an amount under paragraph 3 of Schedule 5 (special cases: prisoners) during a period of imprisonment or detention in legal custody, the claimant is to be treated as not having limited capability for work from the day after the day on which entitlement ended.

### Exceptions from disqualification for imprisonment

**160.**—(1) Notwithstanding section 18(4)(b) of the Act, a claimant is not disqualified for receiving a contributory allowance for any period during which that claimant is undergoing imprisonment or detention in legal custody—

- (a) in connection with a charge brought or intended to be brought against the claimant in criminal proceedings;
- (b) pursuant to any sentence; or
- (c) pursuant to any order for detention,

made by a court in such proceedings, unless paragraph (2) applies.

(2) This paragraph applies where—

- (a) a penalty is imposed on the claimant at the conclusion of the proceedings referred to in paragraph (1); or
- (b) in the case of default of payment of a sum adjudged to be paid on conviction a penalty is imposed in respect of such default.

(3) Notwithstanding section 18(4)(b) of the Act, a claimant is not to be disqualified for receiving a contributory allowance, for any period during which the claimant is undergoing detention in legal custody after the conclusion of criminal proceedings if it is a period during which the claimant is liable to be detained in a hospital or similar institution in Northern Ireland as a person suffering from mental disorder unless the claimant is detained or liable to be detained under Article 53 of the Mental Health Order(156) (removal to hospital of persons serving sentences of imprisonment, etc.).

(4) Where—

- (a) paragraph (3) applies in relation to a claimant; and
- (b) a certificate given by or on behalf of the Secretary of State shows the earliest date on which that claimant would have been expected to be discharged from detention under the sentence or order if the claimant had not been transferred to a hospital or similar institution,

that paragraph is to be treated as not satisfied in relation to that claimant from the day following that date.

(5) In this regulation—

- (a) “court” means any court in the United Kingdom, the Channel Islands or the Isle of Man or in any place to which the Colonial Prisoners Removal Act 1884(157) applies or any naval court-martial, army court-martial or air force court-martial within the meaning of the Courts-Martial (Appeals) Act 1968(158) or the Courts-Martial Appeal Court;
- (b) “hospital or similar institution” means any place (not being a prison, a young offenders centre, a juvenile justice centre or secure accommodation in a children’s home and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
- (c) “penalty” means a sentence of imprisonment or detention under Article 45(1) or (2) of the Criminal Justice (Children) (Northern Ireland) Order 1998(159);
- (d) in relation to a person who is liable to be detained in Northern Ireland as a result of any order made under the Colonial Prisoners Removal Act 1884, references to a prison must be construed as including references to a prison within the meaning of that Act;

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(156) Article 53 was amended by paragraph 38 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c. 26)

(157) 1884 c. 31

(158) 1968 c. 20

(159) S.I. 1998/1504 (N.I. 24); Article 45 was amended by paragraph 19 of Schedule 11 to the Justice (Northern Ireland) Act 2002 (c. 26)

(e) criminal proceedings against any person must be deemed to be concluded upon that person being found insane in those proceedings so that the person cannot be tried or that person's trial cannot proceed.

(6) Where a claimant outside Northern Ireland is undergoing imprisonment or detention in legal custody and, in similar circumstances in Northern Ireland, the claimant would, by virtue of this regulation, not have been disqualified for receiving a contributory allowance, the claimant is not disqualified for receiving that allowance by reason only of the imprisonment or detention.

### **Suspension of payment of a contributory allowance during imprisonment**

**161.**—(1) Subject to the following provisions of this regulation, the payment of a contributory allowance to any claimant—

- (a) which is excepted from the operation of section 18(4)(b) of the Act by virtue of regulation 160(2), (3) or (6); or
- (b) which is payable otherwise than in respect of a period during which the claimant is undergoing imprisonment or detention in legal custody,

is suspended while that claimant is undergoing imprisonment or detention in legal custody.

(2) A contributory allowance is not to be suspended while the claimant is liable to be detained in a hospital or similar institution, as defined in regulation 160(5), during a period for which in the claimant's case, the allowance is or would be excepted from the operation of section 18(4)(b) of the Act by virtue of regulation 160(3).

(3) Where, by virtue of this regulation, payment of a contributory allowance is suspended for any period, the period of suspension is not to be taken into account in calculating any period under regulation 37 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**160**) (extinguishment of right to payment of sums by way of benefit where payment is not obtained within the prescribed period).

## **PART 13**

### **URGENT CASES**

#### **Urgent cases**

**162.**—(1) In a case to which this regulation applies a claimant's weekly applicable amount and that claimant's income and capital are to be calculated in accordance with the provisions of this Part.

(2) Subject to paragraph (3), this regulation applies to a claimant who is treated as possessing income under regulation 107(1) (notional income – income due to be paid or income paid to or in respect of a third party).

(3) This regulation is only to apply to a claimant to whom paragraph (2) applies, where the income that claimant is treated as possessing by virtue of regulation 107(1) is not readily available to that claimant, and—

- (a) the amount of an income-related allowance which would be payable but for this Part is less than the amount of an income-related allowance payable by virtue of the provisions of this Part; and
- (b) the Department is satisfied that, unless the provisions of this Part are applied to the claimant, the claimant or the claimant's family will suffer hardship.

(160) S.R. 1987 No. 465; relevant amending Rules are S.R. 1989 No. 398, S.R. 1993 No. 375, S.R. 1999 No. 472 (C. 36), S.R. 2005 No. 46 and S.R. 2006 No. 168

### **Applicable amounts in urgent cases**

**163.** For the purposes of calculating any entitlement to an income-related allowance under this Part—

- (a) except in a case to which paragraph (b) or (c) applies, a claimant's weekly applicable amount is to be the aggregate of—
  - (i) 90 per cent. of the amount applicable in respect of himself or, if the claimant is a member of a couple or of a polygamous marriage, of the amount applicable in respect of both of them under paragraph 1(1), (2) or (3) of Schedule 4 or, as the case may be, the amount applicable in respect of them under regulation 68 (polygamous marriages),
  - (ii) the amount, if applicable, specified in Part 3 of Schedule 4 (premiums),
  - (iii) the amount, if applicable, specified in Part 4 of Schedule 4 (components), and
  - (iv) any amounts applicable under regulation 67(1)(c) or, as the case may be, 68(1)(d) (housing costs);
- (b) in the case of a claimant to whom any paragraph of Schedule 5 (special cases) applies, the applicable amount is to be the aggregate of—
  - (i) 90 per cent. of the amount applicable in column 2 of that Schedule in respect of the claimant and partner (if any),
  - (ii) the amount, if applicable, specified in Part 3 of Schedule 4 (premiums),
  - (iii) the amount, if applicable, specified in Part 4 of Schedule 4 (components), and
  - (iv) any amounts applicable under regulation 67(1)(c) or, as the case may be, 68(1)(d) (housing costs); or
- (c) in the case of a claimant to whom regulation 162(2) applies, where that claimant is appealing to an appeal tribunal constituted under Chapter 1 of Part 2 of the 1998 Order, against a decision which embodies a determination that the claimant does not have limited capability for work, the applicable amount is to be the aggregate of—
  - (i) 90 per cent. of the amount applicable in respect of himself or, if the claimant is a member of a couple or of a polygamous marriage, of the amount applicable in respect of both of them under paragraph 1(1), (2) or (3) of Schedule 4 or, as the case may be, the amount applicable in respect of them under regulation 68 (polygamous marriages),
  - (ii) the amount, if applicable, specified in Part 3 of Schedule 4 (premiums), and
  - (iii) any amounts applicable under regulation 67(1)(c) or, as the case may be, 68(1)(d) (housing costs).

### **Assessment of income and capital in urgent cases**

**164.—(1)** The claimant's income is to be calculated in accordance with Part 10 subject to the following modifications—

- (a) any income other than—
  - (i) a payment of income or income in kind 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 Fund (2006), or
  - (ii) income to which paragraph 9 (but only to the extent that a concessionary payment would be due under that paragraph for any non-payment of an income-related allowance under regulation 162 or of jobseeker's allowance under regulation 147 of the Jobseeker's Allowance Regulations (urgent cases)), 34, 40(2), (3) or (4), 41,

61 or 62 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) applies,

possessed or treated as possessed by the claimant, is to be taken into account in full notwithstanding any provision in that Part disregarding the whole or any part of that income;

- (b) any income to which regulation 118 (calculation of tariff income from capital) applies is to be disregarded;
- (c) income treated as capital by virtue of regulation 112(1), (2), (3) and (7) (income treated as capital) is to be taken into account as income;
- (d) in a case to which regulation 162(2) (urgent cases) applies, any income to which regulation 107(1) applies is to be disregarded.

(2) The claimant's capital calculated in accordance with Part 10, but including any capital referred to in—

- (a) paragraph 3;
- (b) paragraph 10 (to the extent that such assets as are referred to in that paragraph consist of liquid assets);
- (c) paragraph 11 (except to the extent that the arrears referred to in that paragraph consist of arrears of housing benefit payable under Part 7 of the Contributions and Benefits Act or any arrears of benefit due under regulation 162, or regulation 147 of the Jobseeker's Allowance Regulations (urgent cases)); and
- (d) paragraphs 13(b), 24 and 32,

of Schedule 9 (capital to be disregarded), is to be taken into account in full and the amount of an income-related allowance which would, but for this paragraph be payable under this regulation, is to be payable only to the extent that it exceeds the amount of that capital.

## PART 14

### PERIODS OF LESS THAN A WEEK

#### **Entitlement for less than a week – amount of an employment and support allowance payable**

**165.**—(1) This regulation applies where the claimant is entitled to an employment and support allowance for a part-week and is subject to the following provisions of this Part.

(2) The amount payable by way of an income-related allowance in respect of that part-week is to be calculated by applying the formula—

- (a) where the claimant has no income—

$$\frac{(N \times A)}{7}$$

or

- (b) where the claimant has an income—

$$\frac{N \times (A - I)}{7} - B$$

where—

A = the claimant's weekly applicable amount in the relevant week;

- B = the amount of any employment and support allowance, jobseeker's allowance, income support, maternity allowance, incapacity benefit or severe disablement allowance payable to the claimant or the claimant's partner in respect of any day in the part-week;
- I = the claimant's weekly income in the relevant week;
- N = the number of days in the part-week.

(3) The amount payable by way of a contributory allowance in respect of a part-week is to be calculated by applying the formula—

$$\frac{(N \times X) - Y}{7}$$

where—

- X = the amount calculated in accordance with section 2(1) of the Act;
- Y = the amount of any widow's benefit, widowed parent's allowance, bereavement allowance, training allowance, carer's allowance and any increase in disablement pension payable in accordance with Part 1 of Schedule 7 to the Contributions and Benefits Act (unemployability supplement) payable in respect of any day in the part-week;
- N = the number of days in the part-week.

(4) In this Part—

“part-week” means an entitlement to an employment and support allowance in respect of any period of less than a week;

“relevant week” means the period of 7 days determined in accordance with regulation 166.

### Relevant week

**166.**—(1) Where a part-week—

- (a) is the whole period for which an employment and support allowance is payable, or occurs at the beginning of an award, the relevant week is the period of 7 days ending on the last day of that part-week; or
- (b) occurs at the end of an award, the relevant week is the period of 7 days beginning on the first day of the part-week.

(2) Where a claimant has an award of an employment and support allowance and that claimant's benefit week changes, for the purpose of calculating the amounts of an employment and support allowance payable for the part-week beginning on the day after the last complete benefit week before the change and ending immediately before the change, the relevant week is the period of 7 days beginning on the day after the last complete benefit week.

### Modification in the calculation of income

**167.** For the purposes of regulation 165 (entitlement for less than a week – amount of an employment and support allowance payable), a claimant's income and, in determining the amount payable by way of an income-related allowance, the income of any person which the claimant is treated as possessing under regulations made under section 17(3) of the Act, regulation 68 (polygamous marriages) or regulation 83 (calculation of income and capital of members of claimant's family and of a polygamous marriage), is to be calculated in accordance with Parts 10 (income and capital) and 13 (urgent cases) subject to the following modifications—

- (a) any income which is due to be paid in the relevant week is to be treated as paid on the first day of that week;

- (b) in determining the amount payable by way of an income-related allowance, any jobseeker's allowance, employment and support allowance, income support, maternity allowance, incapacity benefit or severe disablement allowance payable in the relevant week but not in respect of any day in the part-week is to be disregarded;
- (c) the amount referred to as B in regulation 165(2) is to be disregarded;
- (d) in determining the amount payable by way of a contributory allowance, any widow's benefit, training allowance, widowed parent's allowance, bereavement allowance, carer's allowance and any increase in disablement pension payable in accordance with Part 1 of Schedule 7 to the Contributions and Benefits Act (unemployability supplement) which is payable in the relevant week but not in respect of any day in the part-week is to be disregarded;
- (e) where the part-week occurs at the end of the claim—
  - (i) any income, or
  - (ii) any change in the amount of income of the same kind,
 which is first payable within the relevant week but not on any day in the part-week is to be disregarded;
- (f) where only part of the weekly balance of income is taken into account in the relevant week, the balance is to be disregarded.

#### **Reduction in certain cases**

**168.** The reduction to be made in accordance with regulation 69 where regulations 157 and 158 apply, is an amount equal to one seventh of the reduction which would be made under those regulations for a week, multiplied by the number of days in a part-week.

#### **Payment of a contributory allowance for days of certain regular treatment**

**169.**—(1) Where a claimant is entitled to a contributory allowance as a result of being treated as having limited capability for work in accordance with regulation 26 (claimants receiving certain regular treatment), the amount payable is to be equal to one seventh of the amount of the contributory allowance which would be payable in respect of a week in accordance with section 2(1) of the Act multiplied by N.

(2) In paragraph (1), N is the number of days in that week on which the claimant was receiving treatment referred to in regulation 26 or recovering from that treatment, but does not include any day during which the claimant does work.

Sealed with the Official Seal of the Department for Social Development on 1<sup>st</sup> July 2008

(L.S.)

*John O'Neill*  
A senior officer of the Department for Social  
Development

SCHEDULE 1

Regulation 2(1)

Her Majesty's forces

PART 1

PRESCRIBED ESTABLISHMENTS AND ORGANISATIONS

1. Any of the regular naval, military or air forces of the Crown.
2. Royal Fleet Reserve.
3. Royal Navy Reserve.
4. Royal Marines Reserve.
5. Army Reserve.
6. Territorial Army.
7. Royal Air Force Reserve.
8. Royal Auxiliary Air Force.
9. The Royal Irish Regiment, to the extent that its members are not members of any force falling within paragraph 1.

PART 2

ESTABLISHMENTS AND ORGANISATIONS OF  
WHICH HER MAJESTY'S FORCES DO NOT CONSIST

10. Her Majesty's forces are not to be taken to consist of any of the establishments or organisations specified in Part 1 by virtue only of the employment in such establishment or organisation of the following persons—

- (a) any person who is serving as a member of any naval force of Her Majesty's forces and who (not having been an insured person under the National Insurance Act (Northern Ireland) 1966<sup>(161)</sup> and not having been a contributor under the Social Security (Northern Ireland) Act 1975<sup>(162)</sup> or not being a contributor under the Contributions and Benefits Act) locally entered that force at an overseas base;
- (b) any person who is serving as a member of any military force of Her Majesty's forces and who entered that force, or was recruited for that force outside the United Kingdom, and the depot of whose unit is situated outside the United Kingdom;
- (c) any person who is serving as a member of any air force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and is liable under the terms of engagement to serve only in a specified part of the world outside the United Kingdom.

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<sup>(161)</sup>1966 c. 6 (N.I.)

<sup>(162)</sup>1975 c. 15

**Status:** This is the original version (as it was originally made).

SCHEDULE 2

Regulation 19(2) and (3)

Assessment of whether a claimant has limited capability for work

PART 1

PHYSICAL DISABILITIES

<i>(1)</i> Activity	<i>(2)</i> Descriptors	<i>(3)</i> Points
1. Walking with a walking stick or other aid if such aid is normally used.	(a) Cannot walk at all.	15
	(b) Cannot walk more than 50 metres on level ground without repeatedly stopping or severe discomfort.	15
	(c) Cannot walk up or down 2 steps even with the support of a handrail.	15
	(d) Cannot walk more than 100 metres on level ground without stopping or severe discomfort.	9
	(e) Cannot walk more than 200 metres on level ground without stopping or severe discomfort.	6
	(f) None of the above apply.	0
2. Standing and sitting.	(a) Cannot stand for more than 10 minutes, unassisted by another person, even if free to move around, before needing to sit down.	15
	(b) Cannot sit in a chair with a high back and no arms for more than 10 minutes before needing to move from the chair because the degree of discomfort experienced makes it impossible to continue sitting.	15
	(c) Cannot rise to standing from sitting in an upright chair without physical assistance from another person.	15
	(d) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.	15
	(e) Cannot stand for more than 30 minutes, even if free to move around, before needing to sit down.	6
	(f) Cannot sit in a chair with a high back and no arms for more than 30 minutes	6

(1) Activity	(2) Descriptors	(3) Points
	without needing to move from the chair because the degree of discomfort experienced makes it impossible to continue sitting.	
	(g) None of the above apply.	0
3. Bending or kneeling.	(a) Cannot bend to touch knees and straighten up again.	15
	(b) Cannot bend, kneel or squat, as if to pick up a light object, such as a piece of paper, situated 15cm from the floor on a low shelf, and to move it and straighten up again without the help of another person.	9
	(c) Cannot bend, kneel or squat, as if to pick a light object off the floor and straighten up again without the help of another person.	6
	(d) None of the above apply.	0
4. Reaching.	(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
	(b) Cannot put either arm behind back as if to put on a coat or jacket.	15
	(c) Cannot raise either arm to top of head as if to put on a hat.	9
	(d) Cannot raise either arm above head height as if to reach for something.	6
	(e) None of the above apply.	0
5. Picking up and moving or transferring by the use of the upper body and arms (excluding all other activities specified in this Part of this Schedule).	(a) Cannot pick up and move a 0.5 litre carton full of liquid with either hand.	15
	(b) Cannot pick up and move a one litre carton full of liquid with either hand.	9
	(c) Cannot pick up and move a light but bulky object, such as an empty cardboard box, requiring the use of both hands together.	6
	(d) None of the above apply.	0
6. Manual dexterity.	(a) Cannot turn a “star-headed” sink tap with either hand.	15

**Status:** This is the original version (as it was originally made).

(1) Activity	(2) Descriptors	(3) Points
	(b) Cannot pick up a £1 coin or equivalent with either hand.	15
	(c) Cannot turn the pages of a book with either hand.	15
	(d) Cannot physically use a pen or pencil.	9
	(e) Cannot physically use a conventional keyboard or mouse.	9
	(f) Cannot do up/undo small buttons, such as shirt or blouse buttons.	9
	(g) Cannot turn a “star-headed” sink tap with one hand but can with the other.	6
	(h) Cannot pick up a £1 coin or equivalent with one hand but can with the other.	6
	(i) Cannot pour from an open 0.5 litre carton full of liquid.	6
	(j) None of the above apply.	0
7. Speech.	(a) Cannot speak at all.	15
	(b) Speech cannot be understood by strangers.	15
	(c) Strangers have great difficulty understanding speech.	9
	(d) Strangers have some difficulty understanding speech.	6
	(e) None of the above apply.	0
8. Hearing with a hearing aid or other aid if normally worn.	(a) Cannot hear at all.	15
	(b) Cannot hear well enough to be able to hear someone talking in a loud voice in a quiet room, sufficiently clearly to distinguish the words being spoken.	15
	(c) Cannot hear someone talking in a normal voice in a quiet room, sufficiently clearly to distinguish the words being spoken.	9
	(d) Cannot hear someone talking in a loud voice in a busy street, sufficiently clearly to distinguish the words being spoken.	6
	(e) None of the above apply.	0
9. Vision including visual acuity and visual fields, in normal daylight or bright electric light, with glasses or	(a) Cannot see at all.	15

(1) Activity	(2) Descriptors	(3) Points
other aid to vision if such aid is normally worn.	(b) Cannot see well enough to read 16 point print at a distance of greater than 20cm.	15
	(c) Has 50 per cent. or greater reduction of visual fields.	15
	(d) Cannot see well enough to recognise a friend at a distance of at least 5 metres.	9
	(e) Has 25 per cent. or more but less than 50 per cent. reduction of visual fields.	6
	(f) Cannot see well enough to recognise a friend at a distance of at least 15 metres.	6
	(g) None of the above apply.	0
	10(a). Continence other than enuresis (bed wetting) where the claimant does not have an artificial stoma or urinary collecting device.	(a)(i) Has no voluntary control over the evacuation of the bowel.
(a)(ii) Has no voluntary control of the voiding of the bladder.		15
(a)(iii) At least once a month loses control of bowels so that the claimant cannot control the full evacuation of the bowel.		15
(a)(iv) At least once a week, loses control of bladder so that the claimant cannot control the full voiding of the bladder.		15
(a)(v) Occasionally loses control of bowels so that the claimant cannot control the full evacuation of the bowel.		9
(a)(vi) At least once a month loses control of bladder so that the claimant cannot control the full voiding of the bladder.		6
(a)(vii) Risks losing control of bowels or bladder so that the claimant cannot control the full evacuation of the bowel or the full voiding of the bladder if not able to reach a toilet quickly.		6
(a)(viii) None of the above apply.		0
10(b). Continence where the claimant uses a urinary collecting device, worn for the majority of the time including an indwelling urethral or suprapubic catheter.	(b)(i) Is unable to affix, remove or empty the catheter bag or other collecting device without receiving physical assistance from another person.	15

**Status:** This is the original version (as it was originally made).

(1) Activity	(2) Descriptors	(3) Points
	(b)(ii) Is unable to affix, remove or empty the catheter bag or other collecting device without causing leakage of contents.	15
	(b)(iii) Has no voluntary control over the evacuation of the bowel.	15
	(b)(iv) At least once a month, loses control of the bowels so that the claimant cannot control the full evacuation of the bowel.	15
	(b)(v) Occasionally loses control of the bowels so that the claimant cannot control the full evacuation of the bowel.	9
	(b)(vi) Risks losing control of the bowels so that the claimant cannot control the full evacuation of the bowel if not able to reach a toilet quickly.	6
	(b)(vii) None of the above apply.	0
10(c). Continence other than enuresis (bed wetting) where the claimant has an artificial stoma.	(c)(i) Is unable to affix, remove or empty stoma appliance without receiving physical assistance from another person.	15
	(c)(ii) Is unable to affix, remove or empty stoma appliance without causing leakage of contents.	15
	(c)(iii) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a week loses control of bladder so that the claimant cannot control the full voiding of the bladder.	15
	(c)(iv) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a month loses control of bladder so that the claimant cannot control the full voiding of the bladder.	9
	(c)(v) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, risks losing control of the bladder so that the claimant cannot control the full voiding of the bladder if not able to reach a toilet quickly.	6
	(c)(vi) None of the above apply.	0
11. Remaining conscious during waking moments.	(a) At least once a week, has an involuntary episode of lost or altered consciousness,	15

<i>(1)</i> Activity	<i>(2)</i> Descriptors	<i>(3)</i> Points
	resulting in significantly disrupted awareness or concentration.	
	(b) At least once a month, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.	9
	(c) At least twice in the 6 months immediately preceding the assessment, has had an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.	6
	(d) None of the above apply.	0

## PART 2

### MENTAL, COGNITIVE AND INTELLECTUAL FUNCTION ASSESSMENT

<i>(1)</i> Activity	<i>(2)</i> Descriptors	<i>(3)</i> Points
12. Learning or comprehension in the completion of tasks.	(a) Cannot learn or understand how to successfully complete a simple task, such as setting an alarm clock, at all.	15
	(b) Needs to witness a demonstration, given more than once on the same occasion, of how to carry out a simple task before the claimant is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a further demonstration of how to complete it.	15
	(c) Needs to witness a demonstration of how to carry out a	9

**Status:** This is the original version (as it was originally made).

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
	simple task, before the claimant is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a verbal prompt from another person.	
(d)	Needs to witness a demonstration of how to carry out a moderately complex task, such as the steps involved in operating a washing machine to correctly clean clothes, before the claimant is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a verbal prompt from another person.	9
(e)	Needs verbal instructions as to how to carry out a simple task before the claimant is able to learn or understand how to complete the task successfully, but would be unable, within a period of less than one week, to successfully complete the task without receiving a verbal prompt from another person.	6
(f)	None of the above apply.	0

<i>(1)</i> <i>Activity</i>		<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
13. Awareness of hazard.	(a)	Reduced awareness of the risks of everyday hazards (such as boiling water or sharp objects) would lead to daily instances of or to near-avoidance of— (i) injury to self or others, or (ii) significant damage to property or possessions, to such an extent that overall day to day life cannot successfully be managed.	15
	(b)	Reduced awareness of the risks of everyday hazards would lead for the majority of the time to instances of or to near-avoidance of— (i) injury to self or others, or (ii) significant damage to property or possessions, to such an extent that overall day to day life cannot successfully be managed without supervision from another person.	9
	(c)	Reduced awareness of the risks of everyday hazards has led or would lead to frequent instances of or to near-avoidance of— (i) injury to self or others, or (ii) significant damage to property or possessions, but not to such an extent that overall day	6

**Status:** This is the original version (as it was originally made).

<i>(1)</i> <i>Activity</i>		<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
		to day life cannot be managed when such incidents occur.	
	(d)	None of the above apply.	0
14. Memory and concentration.	(a)	On a daily basis, forgets or loses concentration to such an extent that overall day to day life cannot be successfully managed without receiving verbal prompting, given by someone else in the claimant's presence.	15
	(b)	For the majority of the time, forgets or loses concentration to such an extent that overall day to day life cannot be successfully managed without receiving verbal prompting, given by someone else in the claimant's presence.	9
	(c)	Frequently forgets or loses concentration to such an extent that overall day to day life can only be successfully managed with pre-planning, such as making a daily written list of all tasks forming part of daily life that are to be completed.	6
	(d)	None of the above apply.	0
15. Execution of tasks.	(a)	Is unable to successfully complete any everyday task.	15
	(b)	Takes more than twice the length of time it would take a person	15

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
	without any form of mental disablement, to successfully complete an everyday task with which the claimant is familiar.	
	(c) Takes more than one and a half times but no more than twice the length of time it would take a person without any form of mental disablement to successfully complete an everyday task with which the claimant is familiar.	9
	(d) Takes one and a half times the length of time it would take a person without any form of mental disablement to successfully complete an everyday task with which the claimant is familiar.	6
	(e) None of the above apply.	0
16. Initiating and sustaining personal action.	(a) Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain any personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	15
	(b) Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain personal action without requiring daily verbal prompting given by another	15

**Status:** This is the original version (as it was originally made).

(1) Activity	(2) Descriptors	(3) Points
	person in the claimant's presence.	
	(c) Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain personal action without requiring verbal prompting given by another person in the claimant's presence for the majority of the time.	9
	(d) Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain personal action without requiring frequent verbal prompting given by another person in the claimant's presence.	6
	(e) None of the above apply.	0
17. Coping with change.	(a) Cannot cope with very minor, expected changes in routine, to the extent that overall day to day life cannot be managed.	15
	(b) Cannot cope with expected changes in routine (such as a pre-arranged permanent change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.	9
	(c) Cannot cope with minor, unforeseen changes in routine	6

<i>(1)</i> <i>Activity</i>		<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
		(such as an unexpected change of the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	
	(d)	None of the above apply.	0
18. Getting about.	(a)	Cannot get to any specified place with which the claimant is, or would be, familiar.	15
	(b)	Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person on each occasion.	15
	(c)	For the majority of the time is unable to get to a specified place with which the claimant is familiar without being accompanied by another person.	9
	(d)	Is frequently unable to get to a specified place with which the claimant is familiar without being accompanied by another person.	6
	(e)	None of the above apply.	0
19. Coping with social situations.	(a)	Normal activities, for example, visiting new places or engaging in social contact, are precluded because of overwhelming fear or anxiety.	15
	(b)	Normal activities, for example, visiting new	9

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<i>(1)</i> <i>Activity</i>		<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
		places or engaging in social contact, are precluded for the majority of the time due to overwhelming fear or anxiety.	
	(c)	Normal activities, for example, visiting new places or engaging in social contact, are frequently precluded, due to overwhelming fear or anxiety.	6
	(d)	None of the above apply.	0
20. Propriety of behaviour with other people.	(a)	Has unpredictable outbursts of, aggressive, disinhibited, or bizarre behaviour, being either— (i) sufficient to cause disruption to others on a daily basis, or (ii) of such severity that although occurring less frequently than on a daily basis, no reasonable person would be expected to tolerate them.	15
	(b)	Has a completely disproportionate reaction to minor events or to criticism to the extent that the claimant has an extreme violent outburst leading to threatening behaviour or actual physical violence.	15
	(c)	Has unpredictable outbursts of aggressive,	9

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
	disinhibited or bizarre behaviour, sufficient in severity and frequency to cause disruption for the majority of the time.	
(d)	Has a strongly disproportionate reaction to minor events or to criticism, to the extent that the claimant cannot manage overall day to day life when such events or criticism occur.	9
(e)	Has unpredictable outbursts of aggressive, disinhibited or bizarre behaviour, sufficient to cause frequent disruption.	6
(f)	Frequently demonstrates a moderately disproportionate reaction to minor events or to criticism but not to such an extent that the claimant cannot manage overall day to day life when such events or criticism occur.	6
(g)	None of the above apply.	0
21. Dealing with other people.	<p>(a) Is unaware of impact of own behaviour to the extent that—</p> <p>(i) has difficulty relating to others even for brief periods, such as a few hours, or</p>	15

**Status:** This is the original version (as it was originally made).

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
	(ii) causes distress to others on a daily basis.	
(b)	Misinterprets verbal or non-verbal communication to the extent of causing himself significant distress on a daily basis.	15
(c)	Is unaware of impact of own behaviour to the extent that— (i) has difficulty relating to others for longer periods, such as a day or 2, or (ii) causes distress to others for the majority of the time.	9
(d)	Misinterprets verbal or non-verbal communication to the extent of causing significant distress to himself for the majority of the time.	9
(e)	Is unaware of impact of own behaviour to the extent that— (i) has difficulty relating to others for prolonged periods, such as a week, or (ii) frequently causes distress to others.	6
(f)	Misinterprets verbal or non-verbal communication to the extent of causing significant distress to himself on a frequent basis.	6

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
(g)	None of the above apply.	0

## SCHEDULE 3

Regulation 34(1)

## Assessment of whether a claimant has limited capability for work-related activity

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>
1. Walking or moving on level ground.	Cannot— (a) walk (with a walking stick or other aid if such aid is normally used); (b) move (with the aid of crutches if crutches are normally used); or (c) manually propel the claimant’s wheelchair, more than 30 metres without repeatedly stopping, experiencing breathlessness or severe discomfort.
2. Rising from sitting and transferring from one seated position to another.	Cannot complete both of the following— (a) rise to standing from sitting in an upright chair without receiving physical assistance from someone else; and (b) move between one seated position and another seated position located next to one another without receiving physical assistance from someone else.
3. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).	Cannot pick up and move 0.5 litre carton full of liquid with either hand.
4. Reaching.	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
5. Manual dexterity.	Cannot— (a) turn a “star-headed” sink tap with either hand; or (b) pick up a £1 coin or equivalent with either hand.
6(a). Continence other than enuresis (bed wetting) where the claimant does not have an artificial stoma or urinary collecting device.	(a) Has no voluntary control over the evacuation of the bowel; (b) Has no voluntary control over the voiding of the bladder; (c) At least once a week, loses control of bowels so that the claimant cannot control the full evacuation of the bowel;

**Status:** This is the original version (as it was originally made).

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>
	<ul style="list-style-type: none"> <li>(d) At least once a week, loses control of bladder so that the claimant cannot control the full voiding of the bladder;</li> <li>(e) At least once a week, fails to control full evacuation of the bowel, owing to a severe disorder of mood or behaviour; or</li> <li>(f) At least once a week, fails to control full voiding of the bladder, owing to a severe disorder of mood or behaviour.</li> </ul>
6(b). Continence where the claimant uses a urinary collecting device, worn for the majority of the time including an indwelling urethral or suprapubic catheter.	<ul style="list-style-type: none"> <li>(a) Is unable to affix, remove or empty the catheter bag or other collecting device without receiving physical assistance from another person;</li> <li>(b) Is unable to affix, remove or empty the catheter bag or other collecting device without causing leakage of contents;</li> <li>(c) Has no voluntary control over the evacuation of the bowel;</li> <li>(d) At least once a week, loses control of bowels so that the claimant cannot control the full evacuation of the bowel; or</li> <li>(e) At least once a week, fails to control full evacuation of the bowel, owing to a severe disorder of mood or behaviour.</li> </ul>
6(c). Continence other than enuresis (bed wetting) where the claimant has an artificial stoma appliance.	<ul style="list-style-type: none"> <li>(a) Is unable to affix, remove or empty stoma appliance without receiving physical assistance from another person;</li> <li>(b) Is unable to affix, remove or empty stoma without causing leakage of contents;</li> <li>(c) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, has no voluntary control over voiding of bladder;</li> <li>(d) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a week, loses control of the bladder so that the claimant cannot control the full voiding of the bladder; or</li> <li>(e) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a week, fails to control the full voiding of the bladder, owing to a severe disorder of mood or behaviour.</li> </ul>
7. Maintaining personal hygiene.	<ul style="list-style-type: none"> <li>(a) Cannot clean own torso (excluding own back) without receiving physical assistance from someone else;</li> <li>(b) Cannot clean own torso (excluding own back) without repeatedly stopping,</li> </ul>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>
	<p>experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot clean own torso (excluding own back) without receiving regular prompting given by someone else in the claimant's presence; or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to clean own torso (excluding own back) without receiving—</p> <p style="padding-left: 20px;">(i) physical assistance from someone else, or</p> <p style="padding-left: 20px;">(ii) regular prompting given by someone else in the claimant's presence.</p>
8(a). Eating and drinking – conveying food or drink to the mouth.	<p>(a) Cannot convey food or drink to own mouth without receiving physical assistance from someone else;</p> <p>(b) Cannot convey food or drink to own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot convey food or drink to own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to own mouth without receiving—</p> <p style="padding-left: 20px;">(i) physical assistance from someone else, or</p> <p style="padding-left: 20px;">(ii) regular prompting given by someone else in the claimant's presence.</p>
8(b). Eating and drinking – chewing or swallowing food or drink.	<p>(a) Cannot chew or swallow food or drink;</p> <p>(b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to—</p> <p style="padding-left: 20px;">(i) chew or swallow food or drink, or</p> <p style="padding-left: 20px;">(ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.</p>

**Status:** This is the original version (as it was originally made).

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>
9. Learning or comprehension in the completion of tasks.	<ul style="list-style-type: none"> <li>(a) Cannot learn or understand how to successfully complete a simple task, such as the preparation of a hot drink, at all;</li> <li>(b) Needs to witness a demonstration, given more than once on the same occasion of how to carry out a simple task before the claimant is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a further demonstration of how to complete it; or</li> <li>(c) Fails to do any of the matters referred to in sub-paragraph (a) or (b) owing to a severe disorder of mood or behaviour.</li> </ul>
10. Personal action.	<ul style="list-style-type: none"> <li>(a) Cannot initiate or sustain any personal action (which means planning, organisation, problem solving, prioritising or switching tasks);</li> <li>(b) Cannot initiate or sustain personal action without requiring daily verbal prompting given by someone else in the claimant's presence; or</li> <li>(c) Fails to initiate or sustain basic personal action without requiring daily verbal prompting given by someone else in the claimant's presence, owing to a severe disorder of mood or behaviour.</li> </ul>
11. Communication.	<ul style="list-style-type: none"> <li>(a) None of the following forms of communication can be achieved by the claimant— <ul style="list-style-type: none"> <li>(i) speaking (to a standard that may be understood by strangers),</li> <li>(ii) writing (to a standard that may be understood by strangers),</li> <li>(iii) typing (to a standard that may be understood by strangers),</li> <li>(iv) sign language to a standard equivalent to Level 3 British Sign Language;</li> </ul> </li> <li>(b) None of the forms of communication referred to in sub-paragraph (a) are achieved by the claimant, owing to a severe disorder of mood or behaviour;</li> <li>(c) Misinterprets verbal or non-verbal communication to the extent of causing distress to himself on a daily basis; or</li> <li>(d) Effectively cannot make himself understood to others because of the</li> </ul>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>
	claimant's disassociation from reality owing to a severe disorder of mood or behaviour.

SCHEDULE 4

Regulations 67 and 68

Amounts

PART 1

PRESCRIBED AMOUNTS

1. The weekly amounts specified in column (2) in respect of each person or couple specified in column (1) are the weekly amounts specified for the purposes of regulations 67(1) and 68 (prescribed amounts and polygamous marriages).

<i>(1)</i> <i>Person or Couple</i>	<i>(2)</i> <i>Amount</i>
(1) Single claimant—	(1)
(a) (a) who satisfies the conditions set out in section 2(2) or (3) or 4(4) or (5) of the Act;	(a) (a) £60·50;
(b) (b) aged not less than 25;	(b) (b) £60·50;
(c) (c) aged less than 25.	(c) (c) £47·95;
(2) Lone parent—	(2)
(a) (a) who satisfies the conditions set out in section 4(4) or (5) of the Act;	(a) (a) £60·50;
(b) (b) aged not less than 18;	(b) (b) £60·50;
(c) (c) aged less than 18.	(c) (c) £47·95;
(3) Couple—	(3)
(a) (a) where both members are aged not less than 18;	(a) (a) £94·95;
(b) (b) where one member is aged not less than 18 and the other member is a person under 18 who—	(b) (b) £94·95;
(i) had they not been members of a couple, would satisfy the requirements for entitlement to income support other than the requirement to make a claim for it,	

*Status: This is the original version (as it was originally made).*

<i>(1)</i> <i>Person or Couple</i>	<i>(2)</i> <i>Amount</i>
<ul style="list-style-type: none"> <li>(ii) had they not been members of a couple, would satisfy the requirements for entitlement to an income-related allowance,</li> <li>(iii) satisfies the requirements of Article 5(1)(f)(iii) of the Jobseekers Order (prescribed circumstances for persons aged 16 but less than 18); or</li> <li>(iv) is the subject of a direction under Article 18 of that Order (persons under 18: severe hardship);</li> </ul>	
<p>(c) (c) where the claimant satisfies the conditions set out in section 4(4) or (5) of the Act and both members are aged less than 18 and—</p> <ul style="list-style-type: none"> <li>(i) at least one of them is treated as responsible for a child,</li> <li>(ii) had they not been members of a couple, each would have qualified for an income-related allowance,</li> <li>(iii) had they not been members of a couple the claimant’s partner would satisfy the requirements for entitlement to income support other than the requirement to make a claim for it,</li> <li>(iv) the claimant’s partner satisfies the requirements of Article 5(1)(f)(iii) of the Jobseekers Order, or</li> <li>(v) there is in force in respect of the claimant’s partner a direction under Article 18 of that Order;</li> </ul>	<p>(c) (c) £94·95;</p>
<p>(d) (d) where both members are aged less than 18 and—</p> <ul style="list-style-type: none"> <li>(i) at least one of them is treated as responsible for a child,</li> <li>(ii) had they not been members of a couple, each would have qualified for an income-related allowance,</li> </ul>	<p>(d) (d) £72·35;</p>

<i>(1)</i> <i>Person or Couple</i>	<i>(2)</i> <i>Amount</i>
<p>(iii) had they not been members of a couple the claimant's partner satisfies the requirements for entitlement to income support other than the requirement to make a claim for it,</p> <p>(iv) the claimant's partner satisfies the requirements of Article 5(1)(f)(iii) of the Jobseekers Order, or</p> <p>(v) there is in force in respect of the claimant's partner a direction under Article 18 of that Order;</p>	
<p>(e) (e) where the claimant is aged not less than 25 and the claimant's partner is a person under 18 who—</p> <p>(i) would not qualify for an income-related allowance if the person were not a member of a couple,</p> <p>(ii) would not qualify for income support if the person were not a member of a couple,</p> <p>(iii) does not satisfy the requirements of Article 5(1)(f)(iii) of the Jobseekers Order, and</p> <p>(iv) is not the subject of a direction under Article 18 of that Order;</p>	<p>(e) (e) £60.50;</p>
<p>(f) (f) where the claimant satisfies the conditions set out in section 4(4) or (5) of the Act and the claimant's partner is a person under 18 who—</p> <p>(i) would not qualify for an income-related allowance if the person were not a member of a couple,</p> <p>(ii) would not qualify for income support if the person was not a member of a couple,</p> <p>(iii) does not satisfy the requirements of Article 5(1)(f)(iii) of the Jobseekers Order, and</p> <p>(iv) is not the subject of a direction under Article 18 of that Order;</p>	<p>(f) (f) £60.50;</p>

*Status: This is the original version (as it was originally made).*

<i>(1)</i> <i>Person or Couple</i>	<i>(2)</i> <i>Amount</i>
(g) (g) where the claimant satisfies the conditions set out in section 4(4) or (5) of the Act and both members are aged less than 18 and head (c) does not apply;	(g) (g) £60·50;
(h) (h) where the claimant is aged not less than 18 but less than 25 and the claimant's partner is a person under 18 who <ul style="list-style-type: none"> <li>(i) would not qualify for income support if the person were not a member of a couple,</li> <li>(ii) does not satisfy the requirements of Article 5(1)(f) (iii) of the Jobseekers Order, and</li> <li>(iii) is not the subject of a direction under Article 18 of that Order;</li> </ul>	(h) (h) £47·95;
(i) (i) where both members are aged less than 18 and head (d) does not apply.	(i) (i) £47·95.

## PART 2

### PREMIUMS

2. Except as provided in paragraph 4, the weekly premiums specified in Part 3 of this Schedule are, for the purposes of regulations 67(1)(b) and 68(1)(c), to be applicable to a claimant who satisfies the condition specified in paragraphs 5 to 8 in respect of that premium.

3. An enhanced disability premium in respect of a person is not applicable in addition to a pensioner premium.

4.—(1) For the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person is to be treated as being in receipt of any benefit—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(163) applies, for any period during which, apart from the provisions of those Regulations, the person would be in receipt of that benefit; and
- (b) for any period spent by a person in undertaking a course of training or instruction provided or approved by the Department for Employment and Learning under sections 2 and 3 of the Disabled Persons (Employment) Act(164) or section 1(1) of the Employment and Training Act(165) or for any period during which the person is in receipt of a training allowance.

(163) S.R. 1979 No. 242

(164) Sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986

(165) 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))

(2) For the purposes of the carer premium under paragraph 8, a claimant is to 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 Contributions and Benefits Act.

### **Pensioner premium**

5. The condition in respect of a pensioner premium is that the claimant or the claimant's partner has attained the qualifying age for state pension credit.

### **Severe disability premium**

6.—(1) The condition in respect of a severe disability premium is that the claimant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), a claimant is to 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) the claimant is in receipt of the care component,
- (ii) subject to sub-paragraph (4), the claimant has no non-dependants aged 18 or over normally residing with the claimant or with whom the claimant is normally residing, and
- (iii) no person is entitled to, and in receipt of, a carer's allowance under section 70 of the Contributions and Benefits Act(166) in respect of caring for the claimant;

(b) in the case of a claimant who has a partner—

- (i) the claimant is in receipt of the care component,
- (ii) the claimant's partner is also in receipt of the care component or attendance allowance or, if the claimant is a member of a polygamous marriage, all the partners of that marriage are in receipt of the care component or attendance allowance, and
- (iii) subject to sub-paragraph (4), the claimant has no non-dependants aged 18 or over normally residing with the claimant or with whom the claimant is normally residing, and, either a person is entitled to, and in receipt of, a carer's allowance in respect of caring for only one of the couple or, 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 the couple or any partner of the 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 severely sight impaired or is treated as blind or severely sight impaired that partner is to be treated for the purposes of sub-paragraph (2) as if the partner were not a partner of the claimant.

(4) For the purposes of sub-paragraph (2)(a)(ii) and (b)(iii) no account is to be taken of—

- (a) a person receiving attendance allowance or the care component;
- (b) subject to sub-paragraph (7), a person who joins the claimant's household for the first time in order to care for the claimant or the claimant's partner and, immediately before so joining, the claimant or the claimant's partner was treated as a severely disabled person; or

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(166) Section 70 was amended by regulation 2(3) of S.R. 1994 No. 370 and Article 3 of S.R. 2002 No. 321

*Status: This is the original version (as it was originally made).*

- (c) a person who is blind or severely sight impaired or is treated as blind or severely sight impaired.
- (5) For the purposes of sub-paragraph (2)(b) a person is to be treated—
  - (a) as being in receipt of attendance allowance or the care component if the person would, but for the person 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 the person would, but for the person for whom the person 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 is to 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 first paid.
- (7) Sub-paragraph (4)(b) is to apply only for the first 12 weeks following the date on which the person to whom that provision applies first joins the claimant’s household.
- (8) In sub-paragraph (2)(a)(iii) and (b), references to a person being in receipt of a carer’s allowance are to 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 Social Security Fraud Act (Northern Ireland) 2001(167) (loss of benefit for commission of benefit offences).
- (9) In this paragraph—
  - “blind or severely sight impaired” means certified as blind or severely sight impaired and in consequence the person is registered as blind or severely sight impaired in a register maintained by or on behalf of a Health and Social Services Board and a person who has ceased to be registered as blind or severely sight impaired where that person’s eyesight has been regained is, nevertheless, to be treated as blind or severely sight impaired for a period of 28 weeks following the date on which the person ceased to be so registered;
  - “the care component” means the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act.

### **Enhanced disability premium**

- 7.—(1) Subject to sub-paragraph (2), the condition in respect of an enhanced disability premium is that—
- (a) the claimant’s applicable amount includes the support component; or
  - (b) 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 Contributions and Benefits Act or, but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of that Act in respect of—
    - (i) the claimant, or
    - (ii) the claimant’s partner (if any) who is aged less than the qualifying age for state pension credit.
- (2) An enhanced disability premium is not 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 69(2) and has been for a period of more than 52 weeks; or

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(167)2001 c. 17 (N.I.); section 6 was amended by Schedule 6 to the Tax Credits Act 2002 (c. 21), paragraph 33 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)) and section 45(1) of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.))

- (b) a member of a couple or a polygamous marriage where each member is a patient within the meaning of regulation 69(2) and has been for a period of more than 52 weeks.

**Carer premium**

8.—(1) Subject to sub-paragraphs (2) and (4), the condition in respect of a carer premium is that the claimant or the claimant’s partner is, or both of them are, entitled to a carer’s allowance under section 70 of the Contributions and Benefits 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 is to 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) is—

- (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; or
- (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 an income-related allowance, the condition for the award of the carer premium is to be treated as satisfied for a period of 8 weeks from the date on which—

- (a) the person in respect of whose care the carer’s allowance has been awarded dies; or
- (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**

9. For the purpose of determining whether a premium is applicable to a person under paragraphs 6 to 8, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs is to be treated as if it were a payment of that benefit.

**Persons in receipt of benefit**

10. For the purposes of this Part of this Schedule, a person is to be regarded as being in receipt of any benefit if, and only if, it is paid in respect of the person and is to be so regarded only for any period in respect of which that benefit is paid.

**PART 3**

**WEEKLY AMOUNT OF PREMIUMS SPECIFIED IN PART 2**

<i>Premium</i>	<i>Amount</i>
11.—(1) Pensioner premium for a person to whom paragraph 5 applies who—	(1)
(a) (a) is a single claimant and—	(a) (a)

*Status: This is the original version (as it was originally made).*

<i>Premium</i>		<i>Amount</i>	
(i)	is entitled to the work-related activity component,	(i)	£39.55;
(ii)	is entitled to the support component, or	(ii)	£34.55;
(iii)	is not entitled to either of those components;	(iii)	£63.55;
(b)	(b) is a member of a couple and—	(b)	(b)
(i)	is entitled to the work-related activity component,	(i)	£70.40;
(ii)	is entitled to the support component, or	(ii)	£65.40;
(iii)	is not entitled to either of those components.	(iii)	£94.40.
(2)	Severe disability premium—	(2)	
(a)	(a) where the claimant satisfies the condition in paragraph 6(2)(a);	(a)	(a) £50.35;
(b)	(b) where the claimant satisfies the condition in paragraph 6(2)(b)—	(b)	(b)
(i)	if there is someone in receipt of a carer’s allowance or if the person or any partner satisfies that condition only by virtue of paragraph 6(5),	(i)	£50.35;
(ii)	if no-one is in receipt of such an allowance.	(ii)	£100.70.
(3)	Carer premium.	(3)	£27.75 in respect of each person who satisfies the condition specified in paragraph 8(1).
(4)	Enhanced disability premium where the condition in paragraph 7 is satisfied.	(4)	
		(a)	(a) £12.60 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 condition specified in paragraph 7 is satisfied;
		(b)	£18.15 where the claimant is a member of a couple or a polygamous marriage and the condition specified in paragraph 7 is satisfied in respect of a member of that couple or polygamous marriage.

## PART 4

### THE COMPONENTS

12. The amount of the work-related activity component is £24·00.

13. The amount of the support component is £29·00.

## SCHEDULE 5

Regulation 69

### Special Cases

## PART 1

### AMOUNTS PRESCRIBED FOR THE PURPOSES OF SECTION 4(2) OF THE ACT

<i>(1)</i> <i>Person or Couple</i>	<i>(2)</i> <i>Amount</i>
<b>Claimants without accommodation</b>	1. The amount applicable to the claimant under regulation 67(1)(a).
1. A claimant who is without accommodation.	
<b>Members of religious orders</b>	2. Nil.
2. A claimant who is a member of, and fully maintained by, a religious order.	
<b>Prisoners</b>	3
3. A claimant—	
(a) (a) except where sub-paragraph (b) applies, who is a prisoner;	(a) (a) Nil;
(b) (b) who is detained in custody pending trial or sentence following conviction by a court.	(b) (b) Only such amount, if any, as may be applicable under regulation 67(1)(c) and the amount of nil under regulation 67(3).
<b>Specified cases of temporarily separated couples</b>	4. Either—
4. A claimant who is a member of a couple and who is temporarily separated from the claimant's partner where—	(a) the amount applicable to the claimant as a member of a couple under regulation 67(1); or
(a) one member of the couple is—	(b) the aggregate of the claimant's applicable amount and that of the claimant's partner assessed under the provisions of these Regulations as if each of them were a single claimant or a lone parent
(i) not a patient but is residing in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital,	whichever is the greater.

*Status: This is the original version (as it was originally made).*

<i>(1)</i> <i>Person or Couple</i>	<i>(2)</i> <i>Amount</i>
<ul style="list-style-type: none"> <li>(ii) resident in premises used for the rehabilitation of alcoholics or drug addicts,</li> <li>(iii) participating in arrangements for training or rehabilitation provided under sections 2 and 3 of the Disabled Persons (Employment) Act or arranged under section 1(1) of the Employment and Training Act where the person is required to live away from the dwelling occupied as the home, or</li> <li>(iv) in a probation hostel or other establishment for use in connection with the supervision and assistance of offenders or a bail hostel, provided and maintained, or under arrangements entered into, by the Probation Board for Northern Ireland with the approval of the Secretary of State; and</li> </ul> <p>(b) the other member of the couple is—</p> <ul style="list-style-type: none"> <li>(i) living in the dwelling occupied as the home,</li> <li>(ii) a patient, or</li> <li>(iii) residing in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital.</li> </ul>	

**Polygamous marriage where one or more partners are temporarily separated**

5. A claimant who is a member of a polygamous marriage and who is temporarily separated from a partner, where one of them is living in the home where the other member is—

- (a) not a patient but is residing in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital;
- (b) resident in premises used for the rehabilitation of alcoholics or drug addicts;

5. Either—

- (a) the amount applicable to the members of the polygamous marriage under regulation 68; or
- (b) the aggregate of the amount applicable for the members of the polygamous marriage who remain in the home under regulation 68 and the amount applicable in respect of those members not in the home calculated as if each of them were a single claimant or a lone parent,

whichever is the greater.

<i>(1)</i> <i>Person or Couple</i>	<i>(2)</i> <i>Amount</i>
<p>(c) attending a course of training or instruction provided or approved by the Department for Employment and Learning where the course requires the person to live away from home; or</p> <p>(d) in a probation hostel or other establishment for use in connection with the supervision and assistance of offenders or a bail hostel, provided and maintained, or under arrangements entered into, by the Probation Board for Northern Ireland with the approval of the Secretary of State.</p>	

**Couple where one member is abroad**

6. Subject to paragraph 7, a claimant who is a member of a couple where one member of the couple is temporarily absent from the United Kingdom.

6. For the first 4 weeks of that absence, the amount applicable to them as a couple under regulation 67(1) or 69 as the case may be, and thereafter, the amount applicable to the claimant in Northern Ireland under regulation 67(1) or 69 as the case may be, as if the claimant were a single claimant or, as the case may be, lone parent.

**Couple or member of couple taking child or young person abroad for treatment**

7.—(1) A claimant who is a member of a couple where either—

- (a) the claimant or the claimant’s partner is; or
- (b) both the claimant and the claimant’s partner are,

absent from the United Kingdom in the circumstances specified in sub-paragraph (2).

(2) For the purposes of sub-paragraph (1) the specified circumstances are—

- (a) in respect of a claimant those in regulation 153(1)(a), (b), (c)(ii), (d) and (e);
- (b) in respect of a claimant’s partner, as if regulation 153(1)(a), (b), (c)(ii), (d) and (e) applied to that partner.

7. For the first 26 weeks of that absence, the amount applicable to the claimant under regulation 67(1) or 69 as the case may be, and thereafter, if the claimant is in Northern Ireland, the amount applicable to the claimant under regulation 67(1) or 69 as the case may be, as if the claimant were a single claimant or, as the case may be, a lone parent.

**Polygamous marriage where any member is abroad**

8. Subject to paragraph 9, a claimant who is a member of a polygamous marriage where one or

8. For the first 4 weeks of that absence, the amount applicable to the claimant under regulation 68 or 69 as the case may be, and thereafter, if the claimant is in Northern Ireland, the amount applicable to the claimant under regulation 68 or 69, as the case may be, as if

*Status: This is the original version (as it was originally made).*

<i>(1)</i> <i>Person or Couple</i>	<i>(2)</i> <i>Amount</i>
more members of the marriage are temporarily absent from the United Kingdom.	any members of the polygamous marriage not in the United Kingdom were not a member of the marriage.
<p><b>Polygamous marriage: taking child or young person abroad for treatment</b></p> <p>9.—(1) A claimant who is a member of a polygamous marriage where one or more members of the marriage are absent from the United Kingdom in the circumstances specified in sub-paragraph (2).</p> <p>(2) For the purposes of sub-paragraph (1) the specified circumstances are—</p> <ul style="list-style-type: none"> <li>(a) in respect of a claimant, those in regulation 153(1)(a), (b), (c)(ii), (d) and (e);</li> <li>(b) in respect of a claimant’s partner or partners, as the case may be, as if regulation 153(1)(a), (b), (c)(ii), (d) and (e) applied to that partner or those partners.</li> </ul>	<p>9. For the first 26 weeks of that absence, the amount applicable to the claimant under regulation 68 or 69 as the case may be, and thereafter, if the claimant is in Northern Ireland, the amount applicable to the claimant under regulation 68 or 69 as the case may be, as if any member of the polygamous marriage not in the United Kingdom were not a member of the marriage.</p>
<p><b>Partner of a person subject to immigration control</b></p> <p>10. A claimant—</p> <ul style="list-style-type: none"> <li>(a) (a) who is the partner of a person subject to immigration control;</li> <li>(b) (b) where regulation 68 (polygamous marriages) applies, is a person— <ul style="list-style-type: none"> <li>(i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act, or</li> <li>(ii) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations</li> </ul> </li> </ul>	10
	<ul style="list-style-type: none"> <li>(a) (a) The amount applicable in respect of the claimant only under regulation 67(1)(a), any amount which may be applicable to the claimant under regulation 67(1)(b) plus the amount applicable to the claimant under regulation 67(1)(c) or, as the case may be, regulation 69.</li> <li>(b) (b) The amount determined in accordance with regulation 68 or 69 in respect of the claimant and any partners of the claimant who are not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and to whom section 115 of that Act does not apply for the purposes of exclusion from entitlement to an income-related allowance.</li> </ul>

<i>(1)</i> <i>Person or Couple</i>	<i>(2)</i> <i>Amount</i>
(Northern Ireland) 2000(168), and (iii) who is a member of a couple and one or more of the person's partners is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to that partner or those partners for the purposes of exclusion from entitlement to income-related allowance.	
<b>Person from abroad</b>	11. Nil.
11. Person from abroad.	

## PART 2

### AMOUNTS PRESCRIBED FOR THE PURPOSES OF SECTIONS 2(1) AND 4(2) OF THE ACT

<i>(1)</i> <i>Person</i>	<i>(2)</i> <i>Amount</i>
<b>Patients</b>	12. The amount applicable under regulation 67(2) and the amount of nil under regulation 67(3).
12. A claimant who is detained, or liable to be detained, under Article 53 of the Mental Health Order(169) (removal to hospital of persons serving sentences of imprisonment, etc.) but not if the detention continues after the date which the Secretary of State certifies would have been the earliest date on which the claimant could have been released in respect of, or from, the prison sentence if the claimant had not been detained in hospital.	
13. Subject to paragraph 12, a single claimant who has been a patient for a continuous period of more than 52 weeks or, where the claimant is one of a couple, the other member of the couple has been a patient for a continuous period of more than 52 weeks.	13. The amounts applicable under regulation 67(1)(a), (c) and (2) and the amount of nil under regulation 67(3).
<b>Person in hardship</b>	14. The amount to which the claimant is entitled under regulation 67(1)(a) and (2) or 68(1)(a) is to be reduced by 20 per cent.
14. Where regulation 157 applies, a claimant who is a person in hardship.	

(168) S.R. 2000 No. 71; regulation 2 was amended by paragraph 1(s) of the Schedule to S.R. 2002 No. 323 and regulation 6 of S.R. 2003 No. 421

(169) Article 53 was amended by paragraph 38 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c. 26)

## SCHEDULE 6

Regulations 67(1)(c) and 68(1)(d)

## Housing Costs

**Housing costs**

1.—(1) Subject to the following provisions of this Schedule, the housing costs applicable to a claimant are those costs—

- (a) which the claimant or, where the claimant has a partner, that partner is, in accordance with paragraph 4, liable to meet in respect of the dwelling occupied as the home which the claimant or that claimant's partner is treated as occupying; and
- (b) which qualify under paragraphs 16 to 18.

(2) In this Schedule—

“existing housing costs” means housing costs arising under an agreement entered into before 2nd October 1995, or under an agreement entered into after 1st October 1995 (“the new agreement”)—

- (a) which replaces an existing agreement, provided that the person liable to meet the housing costs—
  - (i) remains the same in both agreements, or
  - (ii) where in either agreement more than one person is liable to meet the housing costs, the person is liable to meet the housing costs in both the existing agreement and the new agreement;
- (b) where the existing agreement was entered into before 2nd October 1995; and
- (c) which is for a loan of the same amount as, or less than the amount of, the loan under the agreement it replaces, and for this purpose any amount payable to arrange the new agreement and included in the loan must be disregarded;

“housing costs” means those costs to which sub-paragraph (1) refers;

“new housing costs” means housing costs arising under an agreement entered into after 1st October 1995 other than an agreement referred to in the definition of “existing housing costs”;

“standard rate” means the rate for the time being determined in accordance with paragraph 13.

(3) For the purposes of this Schedule a disabled person is a person—

- (a) in respect of whom the main phase employment and support allowance is payable to the claimant or to a person living with the claimant;
- (b) who, had that person been entitled to income support, would have satisfied the requirements of paragraph 12 of Schedule 2 to the Income Support Regulations (additional condition for the disability premium);
- (c) aged 75 or over; or
- (d) who is disabled or severely disabled for the purposes of section 9(6) of the Tax Credits Act (maximum rate).

(4) For the purposes of sub-paragraph (3), a person shall not cease to be a disabled person on account of that person being disqualified for receiving benefit or treated as not having limited capability for work by virtue of the operation of section 18(1) to (3) of the Act.

**Remunerative work**

2.—(1) Subject to the following provisions of this paragraph, a person is to be treated for the purposes of this Schedule as engaged in remunerative work if that person is engaged or, where the

person's hours of work fluctuate, is engaged on average, for not less than 16 hours a week, being work for which payment is made or which is done in expectation of payment.

(2) Subject to sub-paragraph (3), in determining the number of hours for which a person is engaged in work where that person's hours of work fluctuate, regard is to 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 no recognisable cycle has been established in respect of a person's work, regard is to be had to the number of hours or, where those hours fluctuate, the average of the hours, which that person is expected to work in a week.

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

(5) A person is not to 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 the person is ill.

(6) For the purposes of this paragraph, in determining the number of hours in which a person is engaged or treated as engaged in remunerative work, no account is to be taken of any hours in which the person is engaged in an employment or a scheme to which regulation 43(1) (circumstances under which partners of persons entitled to an income-related allowance are not to be treated as engaged in remunerative work) applies.

(7) For the purposes of sub-paragraphs (1) and (2), in determining the number of hours for which a person is engaged in work, that number is to include any time allowed to that person by that person's employer for a meal or for refreshment, but only where that person is, or expects to be, paid earnings in respect of that time.

(8) Notwithstanding the application of regulation 43 to the partner of a claimant entitled to an income-related allowance, a claimant is to be treated as not being engaged in remunerative work on any day in which that claimant falls within the circumstances prescribed in that regulation.

### **Previous entitlement to other income-related benefits**

3.—(1) Where the claimant or the claimant's partner was in receipt of, or was treated as being in receipt of, an income-based jobseeker's allowance or income support not more than 12 weeks before one of them becomes entitled to an income-related allowance or, where the claimant or the claimant's partner is a person to whom paragraph 15(2) or (13) (linking rules) refers, not more than 26 weeks before becoming so entitled and—

- (a) the applicable amount for that income-based jobseeker's allowance or income support included an amount in respect of housing costs under paragraphs 14 to 16 of Schedule 2 to the Jobseeker's Allowance Regulations(170) or, as the case may be, paragraphs 15 to 17 of Schedule 3 to the Income Support Regulations(171); and
- (b) the circumstances affecting the calculation of those housing costs remain unchanged since the last calculation of those costs,

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(170) Paragraph 16 was amended by paragraph 4(4)(a) of Schedule 2 to [S.R. 2006 No. 407](#)

(171) Schedule 3 was substituted by regulation 2 of [S.R. 1995 No. 301](#) and paragraph 17 was amended by paragraph 1(4)(a) of Schedule 2 to [S.R. 2006 No. 407](#)

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the applicable amount in respect of housing costs for an income-related allowance is to be the applicable amount in respect of those costs current when entitlement to an income-based jobseeker's allowance or income support was last determined.

(2) Where the claimant or the claimant's partner was in receipt of state pension credit not more than 12 weeks before one of them becomes entitled to income support or, where the claimant or the claimant's partner is a person to whom paragraph 15(2) or (13) (linking rules) refers, not more than 26 weeks before becoming so entitled and—

- (a) the appropriate minimum guarantee included an amount in respect of housing costs under paragraphs 11 to 13 of Schedule 2 to the State Pension Credit Regulations (Northern Ireland) 2003<sup>(172)</sup>; and
- (b) the circumstances affecting the calculation of those housing costs remain unchanged since the last calculation of those costs,

the applicable amount in respect of housing costs for an income-related allowance is to be the applicable amount in respect of those costs current when entitlement to state pension credit was last determined.

(3) Where, in the period since housing costs were last calculated for an income-based jobseeker's allowance, income support or, as the case may be, state pension credit, there has been a change of circumstances, other than a reduction in the amount of an outstanding loan, which increases or reduces those costs, the amount to be met under this Schedule must, for the purposes of the claim for an income-related allowance, be recalculated so as to take account of that change.

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

4. A person is liable to meet housing costs where—

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

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

5.—(1) Subject to the following provisions of this paragraph, a person is to be treated as occupying as the home the dwelling normally occupied as the home by that person or, if that person is a member of a family, by that person and that person's family and that person is not to be treated as occupying any other dwelling as the home.

(2) In determining whether a dwelling is the dwelling normally occupied as the claimant's home for the purposes of sub-paragraph (1) regard must be had to any other dwelling occupied by the claimant or by the claimant and that claimant's family whether or not that other dwelling is in Northern Ireland.

(3) Subject to sub-paragraph (4), where a claimant who has no partner is a full-time student or is on a training course and is liable to make payments (including payments of mortgage interest or

<sup>(172)</sup>S.R. 2003 No. 28; paragraph 12 was amended by regulation 5(4)(i) of S.R. 2006 No. 128 and paragraph 13 was amended by paragraph 11(4)(b) of Schedule 2 to S.R. 2006 No. 407

analogous payments) in respect of either (but not both) the dwelling which that claimant occupies for the purpose of attending the course of study or the training course or, as the case may be, the dwelling which that claimant occupies when not attending that course, that claimant is to be treated as occupying as the home the dwelling in respect of which that claimant is liable to make payments.

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

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

(6) Where the claimant is liable to make payments in respect of 2 (but not more than 2) dwellings, that claimant must be treated as occupying both dwellings as the home only—

- (a) where that claimant has left and remains absent from the former dwelling occupied as the home through fear of violence in that dwelling or of violence by a former member of the claimant's family and it is reasonable that housing costs should be met in respect of both that claimant's former dwelling and that claimant's present dwelling occupied as the home;
- (b) in the case of a couple or a member of a polygamous marriage where a partner is a full-time student or is on a training course and it is unavoidable that that student or they should occupy 2 separate dwellings and it is reasonable that housing costs should be met in respect of both dwellings; or
- (c) in the case where a claimant has moved into a new dwelling occupied as the home, except where sub-paragraph (5) applies, for a period not exceeding 4 benefit weeks from the first day of the benefit week in which the move occurs if that claimant's liability to make payments in respect of 2 dwellings is unavoidable.

(7) Where—

- (a) the claimant has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in;
- (b) that claimant had claimed an income-related allowance before moving in and either that claim has not yet been determined or it has been determined but an amount has not been included under this Schedule and if the claim has been refused a further claim has been 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 the claimant or any member of the claimant's family,
  - (ii) the move was delayed pending the outcome of an application for a social fund payment under Part 8 of the Contributions and Benefits Act to meet a need arising out of the move or in connection with setting up the home in the dwelling, and—
    - (aa) a member of the claimant's family is aged 5 or under,
    - (bb) the claimant is a person in respect of whom the main phase employment and support allowance is payable,
    - (cc) the claimant's applicable amount includes a pensioner premium,

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- (dd) the claimant's applicable amount includes a severe disability premium, or
- (ee) a child tax credit is payable for a member of the claimant's family who is disabled or severely disabled for the purposes of section 9(6) of the Tax Credits Act, or

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

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

(8) This sub-paragraph applies to a claimant who enters residential accommodation—

- (a) for the purpose of ascertaining whether the accommodation suits that claimant's needs; and
- (b) with the intention of returning to the dwelling which that claimant normally occupies as the home should, in the event, the residential accommodation prove not to suit that claimant's needs,

and while in the accommodation, the part of the dwelling which that claimant normally occupies as the home is not let or sub-let to another person.

(9) A claimant to whom sub-paragraph (8) applies is to be treated as occupying the dwelling that the claimant normally occupies as the home during any period (commencing on the day that claimant enters the accommodation) not exceeding 13 weeks in which the claimant is resident in the accommodation, but only in so far as the total absence from the dwelling does not exceed 52 weeks.

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

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

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

- (a) that claimant intends to return to occupy the dwelling as the home;
- (b) the part of the dwelling normally occupied by that claimant has not been let or sub-let; and
- (c) that claimant 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 that claimant occupies as the 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, that claimant's partner or 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) receiving, whether in the United Kingdom or elsewhere, medically approved care provided in accommodation other than residential accommodation;
  - (viii) a full-time student to whom sub-paragraph (3) or (6)(b) does not apply,
  - (ix) receiving care provided in residential accommodation, other than where sub-paragraph (8) applies, or
  - (x) a claimant to whom sub-paragraph (6)(a) does not apply and who has left the dwelling which that claimant occupies as the home through fear of violence in that dwelling, or by a person who was formerly a member of that claimant's family; and
- (d) the period of that claimant's absence is unlikely to exceed a period of 52 weeks, or in exceptional circumstances, is unlikely substantially to exceed that period.

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

(13) In this paragraph—

“medically approved” means certified by a medical practitioner;

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

“residential accommodation” means accommodation which is a residential care home, a nursing home, an Abbeyfield Home or an independent hospital;

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

### **Housing costs not met**

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

- (a) in respect of housing benefit expenditure; or
- (b) where the claimant is living in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital except where the claimant is living in such a home or hospital during a temporary absence from the dwelling which the claimant occupies as the home and in so far as they relate to temporary absences, the provisions of paragraph 5(8) to (12) apply to that claimant during that absence.

(2) Subject to the following provisions of this paragraph, loans which, apart from this paragraph, qualify under paragraph 16 must not so qualify where the loan was incurred during the relevant period and was incurred—

- (a) after 27th October 2008;
- (b) after 2nd May 1994 and the housing costs applicable to that loan were not met by virtue of the former paragraph 5A of Schedule 3 to the Income Support Regulations(173), or paragraph 4(2)(a) of that Schedule, paragraph 4(2)(a) of Schedule 2 to the Jobseeker's Allowance Regulations or paragraph 5(2)(a) of Schedule 2 to the State Pension Credit Regulations (Northern Ireland) 2003; or
- (c) subject to sub-paragraph (3), in the 26 weeks preceding 27th October 2008 by a person—
  - (i) who was not at that time entitled to income support, income-based jobseeker's allowance or state pension credit, and

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(173) Paragraph 5A was inserted by regulation 2 of S.R. 1994 No. 138

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- (ii) who becomes, or whose partner becomes, entitled to an income-related allowance after 27th October 2008 and that entitlement is within 26 weeks of an earlier entitlement to income support, an income-based jobseeker's allowance or state pension credit of the claimant or the claimant's partner.

(3) Sub-paragraph (2)(c) shall not apply in respect of a loan where the claimant has interest payments on that loan met without restrictions under an award of income support in respect of a period commencing before 27th October 2008.

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

- (a) is entitled to an income-related allowance, an income-based jobseeker's allowance, income support or state pension credit; or
- (b) has a partner and the partner is entitled to an income-related allowance, an income-based jobseeker's allowance, income support or state pension credit,

together with any linked period, that is to say a period falling between 2 periods separated by not more than 26 weeks in which either head (a) or (b) is satisfied.

(5) For the purposes of sub-paragraph (4), a person is to be treated as entitled to an income-related allowance during any period when that person or that person's partner was not so entitled because—

- (a) that person or that person's partner was participating in an employment programme specified in regulation 75(1)(a) of the Jobseeker's Allowance Regulations(174); and
- (b) in consequence of such participation that person or that person's partner was engaged in remunerative work or had an income in excess of the claimant's applicable amount as prescribed in Part 9.

(6) A person treated by virtue of paragraph 15 as being in receipt of an income-related allowance for the purposes of this Schedule is not to be treated as entitled to an income-related allowance for the purposes of sub-paragraph (4).

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

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

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

- (a) for paying off an earlier loan, and that earlier loan qualified under paragraph 16 during the relevant period; or
- (b) to finance the purchase of a property where an earlier loan, which qualified under paragraph 16 or 17 during the relevant period in respect of another property, is paid off (in whole or in part) with monies received from the sale of that property,

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

(9) Notwithstanding the preceding provisions of this paragraph, housing costs must be met in any case where a claimant satisfies any of the conditions specified in sub-paragraphs (10) to (13), but—

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

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

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

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

- (a) during the relevant period the claimant or a member of the claimant's family acquires an interest ("the relevant interest") in a dwelling which that claimant then occupies or continues to occupy, as the home; and
- (b) in the week preceding the week in which the relevant interest was acquired, housing benefit was payable to the claimant or a member of the claimant's family,

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

- (i) the housing benefit payable in the first week mentioned at head (b), and
- (ii) any amount included in the applicable amount of the claimant or a member of the claimant's family in accordance with regulation 67(1)(c) or 68(1)(d) in that week,

and is to be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of the acquisition, in the standard rate or in any housing costs which qualify under paragraph 18 (other housing costs).

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

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

- (a) the loan commitment increased in consequence of the disposal of the dwelling occupied as the home and the acquisition of an alternative such dwelling; and
- (b) the change of dwelling was made solely by reason of the need to provide separate sleeping accommodation for persons of different sexes aged 10 or over but under the age of 20 who belong to the same family as the claimant.

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

- (a) during the relevant period the claimant or a member of the claimant's family acquires an interest ("the relevant interest") in a dwelling which that claimant then occupies as the home; and
- (b) in the week preceding the week in which the relevant interest was acquired, the applicable amount of the claimant or a member of the claimant's family included an amount determined by reference to paragraph 18 and did not include any amount specified in paragraph 16 or 17,

so however that the amount to be met by way of housing costs shall initially not exceed the amount so determined, and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of acquisition, in the standard rate or in any housing costs which qualify under paragraph 18.

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

### **Apportionment of housing costs**

7.—(1) Where, for the purposes of Article 4 of, and Schedule 5 to, the Rates (Northern Ireland) Order 1977(175), it appears to the Department of Finance and Personnel, or it is deemed in pursuance of paragraphs 2 to 4 of that Schedule that the hereditament includes the home and that only a

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proportion of the rateable value of the hereditament is attributable to use for the purpose of a private dwelling, the amounts applicable under this Schedule are to be such proportion of the amounts applicable in respect of the hereditament or premises as a whole as is equal to the proportion of the rateable value of the hereditament attributable to the part of the hereditament used for the purposes of a private tenancy.

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

### **Existing housing costs**

8.—(1) Subject to the provisions of this Schedule, the existing housing costs to be met in any particular case are—

- (a) where the claimant has been entitled to an employment and support allowance for a continuous period of 26 weeks or more, the aggregate of—
  - (i) an amount determined in the manner set out in paragraph 11 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 16 or 17, and
  - (ii) an amount equal to any payments which qualify under paragraph 18(1)(a) to (c);
- (b) where the claimant has been entitled to an employment and support allowance for a continuous period of not less than 8 weeks but less than 26 weeks, an amount which is half the amount which would fall to be met by applying the provisions of head (a);
- (c) in any other case, nil.

(2) For the purposes of sub-paragraph (1) and subject to sub-paragraph (3), the eligible capital for the time being owing is to be determined on the date the existing housing costs are first met and thereafter on each anniversary of that date.

(3) Where a claimant or that claimant's partner ceases to be in receipt of or treated as being in receipt of income support, income-based jobseeker's allowance or state pension credit and one of them becomes entitled to an income-related allowance in a case to which paragraph 3 applies, the eligible capital for the time being owing is to be recalculated on each anniversary of the date on which the housing costs were first met for whichever of the benefits concerned the claimant or the claimant's partner was first entitled.

### **New housing costs**

9.—(1) Subject to the provisions of this Schedule, the new housing costs to be met in any particular case are—

- (a) where the claimant has been entitled to an employment and support allowance for a continuous period of 39 weeks or more, an amount—
  - (i) determined in the manner set out in paragraph 11 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 16 or 17, and
  - (ii) equal to any payments which qualify under paragraph 18(1)(a) to (c);
- (b) in any other case, nil.

(2) For the purposes of sub-paragraph (1) and subject to sub-paragraph (3), the eligible capital for the time being owing is to be determined on the date the new housing costs are first met and thereafter on each anniversary of that date.

(3) Where a claimant or that claimant's partner ceases to be in receipt of or treated as being in receipt of income support, income-based jobseeker's allowance or state pension credit and one of them becomes entitled to an income-related allowance in a case to which paragraph 3 applies, the eligible capital for the time being owing is to be recalculated on each anniversary of the date on which the housing costs were first met for whichever of the benefits concerned the claimant or that claimant's partner was first entitled.

(4) This sub-paragraph applies to a claimant who at the time the claim is made—

- (a) is a person who is described in paragraph 4 or 5 of Schedule 1B to the Income Support Regulations(176) (person caring for another person);
- (b) is detained in custody pending trial or sentence upon conviction; or
- (c) has been refused payments under a policy of insurance on the ground that—
  - (i) the claim under the policy is the outcome of a pre-existing medical condition which, under the terms of the policy, does not give rise to any payment by the insurer, or
  - (ii) that claimant was infected by the Human Immunodeficiency Virus,and the policy was taken out to insure against the risk of being unable to maintain repayments on a loan which is secured by a mortgage or a charge over land.

(5) Subject to sub-paragraph (7), this sub-paragraph applies where a person claims an income-related allowance because of—

- (a) the death of a partner; or
- (b) being abandoned by that claimant's partner,

and where that claimant's family includes a child.

(6) In the case of a claimant to whom sub-paragraph (4) or (5) applies, any new housing costs are to be met as if they were existing housing costs and paragraph 8 (existing housing costs) applied to them.

(7) Sub-paragraph (5) must cease to apply to a claimant who subsequently becomes one of a couple.

#### **General exclusions from paragraphs 8 and 9**

10.—(1) Paragraphs 8 and 9 shall not apply where—

- (a) the claimant's partner has attained the qualifying age for state pension credit;
- (b) the housing costs are payments, where the dwelling occupied as the home is a tent, in respect of the tent and the site on which it stands.

(2) In a case falling within sub-paragraph (1), the housing costs to be met are—

- (a) where head (a) of that sub-paragraph applies, an amount—
  - (i) determined in the manner set out in paragraph 11 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 16 or 17, and
  - (ii) equal to the payments which qualify under paragraph 18;
- (b) where head (b) of that sub-paragraph applies, an amount equal to the payments which qualify under paragraph 18(1)(d).

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(176) Schedule 1B was inserted by regulation 22 of S.R. 1996 No. 199 and paragraph 4 was amended by regulation 33 of S.R. 1996 No. 358, regulation 4(1) of S.R. 2000 No. 74, regulation 3(3) of S.R. 2002 No. 80 and paragraph 1(g) of the Schedule to S.R. 2002 No. 323

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### The calculation for loans

11. The weekly amount of existing housing costs or, as the case may be, new housing costs to be met under this Schedule in respect of a loan which qualifies under paragraph 16 or 17 are to be calculated by applying the formula—

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

where—

- A = the amount of the loan which qualifies under paragraph 16 or 17; and  
 B = the standard rate for the time being applicable in respect of that loan.

### General provisions applying to new and existing housing costs

12.—(1) Where, on or after 2nd October 1995, a person enters into a new agreement in respect of a dwelling and an agreement entered into before 2nd October 1995 (“the earlier agreement”) continues in force independently of the new agreement, then—

- (a) the housing costs applicable to the new agreement are to be calculated by reference to the provisions of paragraph 9 (new housing costs);  
 (b) the housing costs applicable to the earlier agreement are to be calculated by reference to the provisions of paragraph 8 (existing housing costs),

and the resulting amounts are to be aggregated.

(2) Sub-paragraph (1) does not apply in the case of a claimant to whom paragraph 10 applies.

(3) Where for the time being a loan exceeds, or in a case where more than one loan is to be taken into account, the aggregate of those loans exceeds the appropriate amount specified in sub-paragraph (4), then the amount of the loan or, as the case may be, the aggregate amount of those loans, shall for the purposes of this Schedule, be the appropriate amount.

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

(5) Where a claimant is treated under paragraph 5(6) as occupying 2 dwellings as the home, then the restrictions imposed by sub-paragraph (3) are to be applied separately to the loans for each dwelling.

(6) In a case to which paragraph 7 applies, the appropriate amount for the purposes of sub-paragraph (3) is to be the lower of—

- (a) a sum determined by applying the formula—

$$P \times Q$$

where—

- P = the relevant fraction for the purposes of paragraph 7; and  
 Q = the amount or, as the case may be, the aggregate amount for the time being of any loan or loans which qualify under this Schedule; or

- (b) the sum for the time being specified in sub-paragraph (4).

(7) In a case to which paragraph 16(3) or 17(3) applies, the appropriate amount for the purposes of sub-paragraph (3) is to be the lower of—

- (a) a sum representing for the time being the part of the loan applied for the purposes specified in paragraph 16(1) or, as the case may be, paragraph 17(1); or  
 (b) the sum for the time being specified in sub-paragraph (4).

(8) In the case of any loan to which paragraph 17(2)(k) applies the whole of the loan, to the extent that it remains unpaid, is to be disregarded in determining whether the amount for the time being specified in sub-paragraph (4) is exceeded.

(9) Where in any case the amount for the time being specified for the purposes of sub-paragraph (4) is exceeded and there are 2 or more loans to be taken into account under either or both paragraphs 16 and 17, then the amount of eligible interest in respect of each of those loans to the extent that the loans remain outstanding is to be determined as if each loan had been reduced to a sum equal to the qualifying portion of that loan.

(10) For the purposes of sub-paragraph (9), the qualifying portion of a loan is to be determined by applying the following formula—

$$R \times \frac{S}{T}$$

where—

- R = the amount for the time being specified for the purposes of sub-paragraph (3);  
S = the amount of the outstanding loan to be taken into account; and  
T = the aggregate of all outstanding loans to be taken into account under paragraphs 16 and 17.

### **The standard rate**

13.—(1) The standard rate is the rate of interest applicable per annum to a loan which qualifies under this Schedule.

(2) Subject to sub-paragraph (3), the standard rate is 1.58 per cent. plus—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 of the Bank of England Act 1998(177) (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

(3) The Department will determine the date from which the standard rate calculated in accordance with sub-paragraph (2) takes effect.

### **Excessive housing costs**

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

- (a) the dwelling occupied as the home, excluding any part which is let, is larger than is required by the claimant, that claimant's partner (if the claimant has a partner), any person under the age of 20 and any other non-dependants having regard, in particular, to suitable alternative accommodation occupied by a household of the same size;
- (b) the immediate area in which the dwelling occupied as the home is located is more expensive than other areas in which suitable alternative accommodation exists; or
- (c) the outgoings of the dwelling occupied as the home which are met under paragraphs 16 to 18 are higher than the outgoings of suitable alternative accommodation in the area.

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

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

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

(5) In sub-paragraph (4) "the relevant factors" are—

- (a) the availability of suitable accommodation and the level of housing costs in the area; and
- (b) the circumstances of the claimant and those who live with the claimant, including, in particular, the age and state of health of any of those persons, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any person under the age of 20 who lives with the claimant.

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

- (a) the claimant became entitled to an income-related allowance where the claimant's housing costs fell within one of the cases in sub-paragraph (1) on that date; or
- (b) a decision took effect which was made under Article 11 of the 1998 Order<sup>(178)</sup> on the ground that the claimant's housing costs fell within one of the cases in sub-paragraph (1),

nor during the next 26 weeks if and so long as the best endeavours of the claimant are used to obtain cheaper accommodation.

(7) For the purposes of calculating any period of 26 weeks referred to in sub-paragraph (6), and for those purposes only, a person is to be treated as entitled to an income-related allowance for any period of 12 weeks or less in respect of which that person was not in receipt of an income-related allowance and which fell immediately between periods in respect of which that person was in receipt of that allowance.

(8) Any period in respect of which—

- (a) an income-related allowance was paid to a claimant; and
- (b) it was subsequently determined that such a claimant was not entitled to an income-related allowance for that period,

shall be treated for the purposes of sub-paragraph (7) as a period in respect of which that claimant was not in receipt of an income-related allowance.

(9) Paragraph 15(1)(c) to (f) shall apply to sub-paragraph (7) as it applies to paragraphs 8 and 9 but with the modification as if "Subject to sub-paragraph (2)," was omitted and references to "claimant" were references to the person mentioned in sub-paragraph (7).

(10) References to an income-related allowance in sub-paragraphs (6) and (7) must be treated as including references to income support, income-based jobseeker's allowance and state pension credit in respect of any period which falls immediately before the appointed day.

### Linking rules

15.—(1) Subject to sub-paragraph (2), for the purposes of this Schedule—

<sup>(178)</sup>Article 11 was amended by paragraph 17 of Schedule 6 and Schedule 9 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999

- (a) a claimant is to be treated as being in receipt of an income-related allowance during the following periods—
  - (i) any period in respect of which it was subsequently determined that that claimant was entitled to an income-related allowance, and
  - (ii) any period of 12 weeks or less or, as the case may be, 52 weeks or less in respect of which that claimant was not in receipt of an income-related allowance and which fell immediately between periods in respect of which—
    - (aa) that claimant was, or was treated as being, in receipt of an income-related allowance,
    - (bb) that claimant was treated as entitled to an income-related allowance for the purpose of sub-paragraph (9) or (10), or
    - (cc) sub-head (i) applies;
- (b) a claimant is to be treated as not being in receipt of an income-related allowance during any period other than a period to which head (a)(ii) applies in respect of which it is subsequently determined that that claimant was not so entitled;
- (c) where—
  - (i) the claimant was a member of a couple or a polygamous marriage,
  - (ii) the claimant's partner was, in respect of a past period, in receipt of an income-related allowance for that claimant's partner and the claimant,
  - (iii) the claimant is no longer a member of that couple or polygamous marriage, and
  - (iv) the claimant made a claim for an income-related allowance within 12 weeks or, as the case may be, 52 weeks of ceasing to be a member of that couple or polygamous marriage,

the claimant must be treated as having been in receipt of an income-related allowance for the same period as the claimant's former partner had been or had been treated, for the purposes of this Schedule, as having been;
- (d) where the claimant's partner's applicable amount was determined in accordance with paragraph 1(1) or (2) of Part 1 of Schedule 4 in respect of a past period, provided that the claim was made within 12 weeks or, as the case may be, 52 weeks of the claimant and that claimant's partner becoming one of a couple or polygamous marriage, the claimant is to be treated as having been in receipt of an income-related allowance for the same period as the claimant's partner had been or had been treated, for the purposes of this Schedule, as having been;
- (e) where the claimant is a member of a couple or a polygamous marriage and the claimant's partner was, in respect of a past period, in receipt of an income-related allowance for that claimant's partner and the claimant, and the claimant has begun to receive an income-related allowance as a result of an election by the members of the couple or polygamous marriage, that claimant is to be treated as having been in receipt of an income-related allowance for the same period as that claimant's partner had been or had been treated, for the purposes of this Schedule, as having been;
- (f) where the claimant—
  - (i) is a member of a couple or a polygamous marriage and the claimant's partner was, immediately before the participation by any member of that couple or polygamous marriage in an employment programme specified in regulation 75(1)(a) of the Jobseeker's Allowance Regulations, in receipt of an income-related allowance and the claimant's applicable amount included an amount for the couple or for the partners of the polygamous marriage, and

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(ii) has, immediately after that participation in that programme, begun to receive an income-related allowance as a result of an election under regulation 4(3) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(179) by the members of the couple or polygamous marriage,

the claimant is to be treated as having been in receipt of an income-related allowance for the same period as that claimant's partner had been or had been treated, for the purposes of this Schedule, as having been;

(g) where—

(i) the claimant was a member of a family of a person (not being a former partner) entitled to an income-related allowance and at least one other member of that family was a child or young person,

(ii) the claimant becomes a member of another family which includes that child or young person, and

(iii) the claimant made a claim for an income-related allowance within 12 weeks or, as the case may be, 52 weeks of the date on which the person entitled to an income-related allowance mentioned in sub-head (i) ceased to be so entitled,

the claimant is to be treated as being in receipt of an income-related allowance for the same period as that person had been or had been treated, for the purposes of this Schedule, as having been.

(2) Where a claimant with the care of a child has ceased to be in receipt of an income-related allowance in consequence of the payment of child support maintenance under the 1991 Order and immediately before ceasing to be so in receipt an amount determined in accordance with paragraph 8(1)(a)(i) or 9(1)(a)(i) was applicable to that claimant, then—

(a) if the child support maintenance assessment or, as the case may be, maintenance calculation concerned is terminated or replaced by a lower assessment or, as the case may be, calculation in consequence of the coming into operation on or after 18th April 1995 of regulations made under the 1991 Order; or

(b) where the child support maintenance assessment or, as the case may be, maintenance calculation concerned is an interim maintenance assessment or, as the case may be, interim maintenance decision or default maintenance decision and, in circumstances other than those referred to in head (a), it is terminated or replaced after termination by another interim maintenance assessment or, as the case may be, interim maintenance decision or default maintenance decision or by a maintenance assessment or, as the case may be, calculation made in accordance with Part 1 of Schedule 1 to the 1991 Order, in either case of a lower amount than the assessment or, as the case may be, calculation concerned,

sub-paragraph (1)(a)(ii) shall apply to that claimant as if for “any period of 12 weeks or less” there were substituted “any period of 26 weeks or less”.

(3) For the purposes of this Schedule, where the claimant has ceased to be entitled to an income-related allowance because that claimant or that claimant's partner is participating in arrangements for training made under sections 2 and 3 of the Disabled Persons (Employment) Act(180) or section 1(1) of the Employment and Training Act(181), the claimant is to be treated as if the claimant had been in receipt of an income-related allowance for the period during which that claimant or that claimant's partner was participating in such arrangements or attending such a course.

(179) S.R. 1987 No. 465; regulation 4(3) was amended by regulation 3(3)(a) of S.R. 1996 No. 449 and paragraph 15(3) of Schedule 3 to S.R. 2005 No. 536

(180) Sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986

(181) 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))

(4) For the purposes of this Schedule, a claimant who has ceased to be entitled to an income-related allowance because—

- (a) that claimant or that claimant's partner was participating in an employment programme specified in regulation 75(1)(a) of the Jobseeker's Allowance Regulations; and
- (b) in consequence of such participation the claimant or the claimant's partner was engaged in remunerative work or had an income in excess of the claimant's applicable amount as prescribed in Part 9,

shall be treated as if the claimant had been in receipt of an income-related allowance for the period during which that claimant or that claimant's partner was participating in that programme.

(5) Where, for the purposes of sub-paragraphs (1), (3) and (4), a claimant is treated as being in receipt of an income-related allowance, for a certain period, that claimant shall, subject to sub-paragraph (6), be treated as being entitled to an income-related allowance for the same period.

(6) Where the appropriate amount of a loan exceeds the amount specified in paragraph 12(4), sub-paragraph (5) shall not apply except—

- (a) for the purposes of paragraph 8(1) or 9(1); or
- (b) where the claimant has ceased to be in receipt of an income-related allowance for a period of 104 weeks or less because that claimant or that claimant's partner is a work or training beneficiary within the meaning of regulation 148 (work or training beneficiaries).

(7) For the purposes of this Schedule, in determining whether a claimant is entitled to, or to be treated as entitled to, an income-related allowance, entitlement to a contribution-based jobseeker's allowance immediately before a period during which that claimant or that claimant's partner is participating in an employment programme specified in regulation 75(1)(a) of the Jobseeker's Allowance Regulations is to be treated as entitlement to an income-related allowance for the purposes of any requirement that a claimant is, or has been, entitled to an income-related allowance for any period of time.

(8) For the purposes of this Schedule, sub-paragraph (9) applies where the claimant is not entitled to an income-related allowance by reason only that the claimant has—

- (a) capital exceeding £16,000;
- (b) income exceeding the applicable amount which applies in that claimant's case; or
- (c) both capital exceeding £16,000 and income exceeding the applicable amount which applies in that claimant's case.

(9) A claimant to whom sub-paragraph (8) applies is to be treated as entitled to an income-related allowance throughout any period of not more than 39 weeks which comprises only days—

- (a) on which that claimant is entitled to a contributory allowance, a contribution-based jobseeker's allowance, statutory sick pay or incapacity benefit; or
- (b) on which that claimant is, although not entitled to any of the benefits mentioned in head (a), entitled to be credited with earnings equal to the lower earnings limit for the time being in force in accordance with regulation 8A or 8B of the Social Security (Credits) Regulations (Northern Ireland) 1975(182).

(10) Subject to sub-paragraph (11), a claimant to whom sub-paragraph (8) applies and who is either a lone parent or a person who is described in paragraph 4 or 5 of Schedule 1B to the Income Support Regulations (persons caring for another person) is, for the purposes of this Schedule, to be treated as entitled to an income-related allowance throughout any period of not more than 39

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(182) S.R. 1975 No. 113; regulations 8A and 8B were inserted by regulation 2(6) of S.R. 1996 No. 430 and regulation 8A was amended by regulation 3 of S.R. 2000 No. 404, regulation 3 of S.R. 2001 No. 120 and regulation 2(4) of S.R. 2002 No. 80 and regulation 8B was amended by regulation 3 of S.R. 2000 No. 404 and regulation 2(2) of S.R. 2003 No. 151

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weeks following the refusal of a claim for an income-related allowance made by or on behalf of that claimant.

(11) Sub-paragraph (10) shall not apply in relation to a claimant mentioned in that sub-paragraph who, during the period referred to in that sub-paragraph is—

- (a) engaged in, or is treated as engaged in, remunerative work or whose partner is engaged in, or is treated as engaged in, remunerative work;
- (b) in receipt of a disability living allowance and in full-time education;
- (c) temporarily absent from Northern Ireland, other than in the circumstances specified in regulation 152 or 153(1)(c)(ii).

(12) In a case where—

- (a) sub-paragraphs (9) and (10) apply solely by virtue of sub-paragraph (8)(b); and
- (b) the claimant's income includes payments under a policy taken out to insure against the risk that the policy holder is unable to meet any loan or payment which qualifies under paragraphs 16 to 18,

sub-paragraphs (9) and (10) shall have effect as if for “throughout any period of not more than 39 weeks” there were substituted “throughout any period that payments are made in accordance with the terms of the policy”.

(13) This sub-paragraph applies—

- (a) to a person who claims an income-related allowance, or in respect of whom an income-related allowance is claimed and who—
  - (i) received payments under a policy of insurance taken out to insure against loss of employment, and those payments are exhausted, and
  - (ii) had a previous award of an income-related allowance where the applicable amount included an amount by way of housing costs; and
- (b) where the period in respect of which the previous award of an income-related allowance was payable ended not more than 26 weeks before the date the claim was made.

(14) Where sub-paragraph (13) applies, in determining—

- (a) for the purposes of paragraph 8(1) whether a claimant has been entitled to an income-related allowance for a continuous period of 26 weeks or more; or
- (b) for the purposes of paragraph 9(1) whether a claimant has been entitled to an income-related allowance for a continuous period of 39 weeks or more,

any week falling between the date of the termination of the previous award and the date of the new claim is to be ignored.

(15) In the case of a claimant who is a work or training beneficiary, the references in sub-paragraph (1)(a)(ii), (c)(iv), (d) and (g)(iii) to a period of 12 weeks are to be treated as references to a period of 104 weeks.

(16) For the purposes of sub-paragraph (1)(a)(ii), (c)(iv), (d) and (g)(iii), the relevant period shall be—

- (a) 52 weeks in the case of a person to whom sub-paragraph (17) applies;
- (b) subject to sub-paragraph (15), 12 weeks in any other case.

(17) Subject to sub-paragraph (18), this sub-paragraph applies in the case of a claimant who, on or after 27th October 2008, has ceased to be entitled to an income-related allowance because that claimant or that claimant's partner—

- (a) has commenced employment as an employed earner or as a self-employed earner or has increased the hours in which that claimant or that claimant's partner is engaged in such employment;
- (b) is taking active steps to establish that claimant or that claimant's partner in employment as an employed earner or as a self-employed earner under any scheme for assisting persons to become so employed which is mentioned in regulation 19(1)(q) of the Jobseeker's Allowance Regulations; or
- (c) is participating in—
  - (i) a New Deal option, as specified in regulation 75(1)(a)(i), (ii) or (iii) or (b)(ii) of the Jobseeker's Allowance Regulations;
  - (ii) the self-employment route; or
  - (iii) the Preparation for Employment Programme specified in regulation 75(1)(a)(v) of the Jobseeker's Allowance Regulations,

and, as a consequence, that claimant or that claimant's partner was engaged in remunerative work or had income in excess of the applicable amount as prescribed in Part 9.

(18) Sub-paragraph (17) is only to apply to the extent that immediately before the day on which the claimant ceased to be entitled to an income-related allowance, that claimant's housing costs were being met in accordance with paragraph 8(1)(a) or (b) or 9(1)(a) or would have been so met but for any non-dependant deduction under paragraph 19.

(19) For the purpose of determining whether the linking rules set out in this paragraph apply in a case where the claimant's former partner was entitled to state pension credit, any reference to an income-related allowance in this Schedule is to be taken to include also a reference to state pension credit.

(20) Where a person is one to whom regulation 6(5) of the Income Support Regulations (persons not treated as engaged in remunerative work) applies, the period prescribed in paragraph (6) of that regulation is not to be included for the purposes of any linking rule or for determining whether any qualifying or other period is satisfied.

### **Loans on residential property**

16.—(1) A loan qualifies under this paragraph where the loan was taken out to defray monies applied for—

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

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

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

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

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

- (a) carrying out repairs and improvements to the dwelling occupied as the home;
- (b) paying any service charge imposed to meet the cost of repairs and improvements to the dwelling occupied as the home;

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- (c) paying off another loan to the extent that the other loan would have qualified under head (a) or (b) had the loan not been paid off,

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

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

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

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

### **Other housing costs**

18.—(1) Subject to the deductions specified in sub-paragraph (2), there are to be met under this paragraph the amounts, calculated on a weekly basis, in respect of the following housing costs—

- (a) ground rent;
- (b) service charges;
- (c) payments by way of rentcharge;
- (d) where the dwelling occupied as the home is a tent, payments in respect of the tent and the site on which it stands.

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

- (a) where the costs are inclusive of any of the items mentioned in paragraph 6(2) of Schedule 1 to the Housing Benefit Regulations (payment in respect of fuel charges), the deductions prescribed in that paragraph unless the claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, in which case the estimated amount;
- (b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit Regulations<sup>(183)</sup> (ineligible service charges) the amounts attributable to those ineligible service charges or where that amount is not

<sup>(183)</sup>Paragraph 1 was amended by regulation 7(4) of S.R. 2007 No. 154

separated from or separately identified within the housing costs to be met under this paragraph, such part of the payments made in respect of those housing costs which are fairly attributable to the provision of those ineligible services having regard to the costs of comparable services;

- (c) any amount for repairs and improvements, and for this purpose “repairs and improvements” has the meaning given by paragraph 17(2).

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

(4) Where the claimant or a member of the claimant’s family—

- (a) pays for reasonable repairs or redecorations to be carried out to the dwelling they occupy;
- (b) that work was not the responsibility of the claimant or any member of the claimant’s family; and
- (c) in consequence of that work being done, the costs which are normally met under this paragraph are waived,

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

#### **Non-dependant deductions**

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

- (a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work, £47·75;
- (b) in respect of a non-dependant aged 18 or over to whom head (a) does not apply, £7·40.

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (1)(a) applies because that non-dependant is in remunerative work, where the claimant satisfies the Department that the non-dependant’s gross weekly income is—

- (a) less than £116·00, the deduction to be made under this paragraph shall be the deduction specified in sub-paragraph (1)(b);
- (b) not less than £116·00 but less than £172·00, the deduction to be made under this paragraph shall be £17·00;
- (c) not less than £172·00 but less than £223·00, the deduction to be made under this paragraph shall be £23·35;
- (d) not less than £223·00 but less than £296·00, the deduction to be made under this paragraph shall be £38·20;
- (e) not less than £296·00 but less than £369·00, the deduction to be made under this paragraph shall be £43·50.

(3) Only one deduction is to be made under this paragraph in respect of a couple or, as the case may be, the members of a polygamous marriage, and where, but for this sub-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 is to be deducted.

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(4) In applying the provisions of sub-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 sub-paragraph (2), to the couple's or, as the case may be, all the members of the polygamous marriage's, joint weekly income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple or members of a polygamous marriage), the deduction in respect of that non-dependant is to be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the housing costs in respect of the dwelling occupied as the home payable by each of them.

(6) No deduction is to be made in respect of any non-dependants occupying the dwelling occupied as the home of the claimant, if the claimant or any partner of the claimant is—

- (a) certified as blind or severely sight impaired and in consequence is registered as blind or severely sight impaired in a register maintained by or on behalf of a Health and Social Services Board, or who is within 28 weeks of ceasing to be so registered;
- (b) receiving in respect of that claimant or that claimant's partner either—
  - (i) an attendance allowance, or
  - (ii) the care component of the disability living allowance.

(7) No deduction is to be made in respect of a non-dependant—

- (a) if, although the non-dependant resides with the claimant, it appears to the Department that the dwelling occupied as the non-dependant's home is normally elsewhere;
- (b) if the non-dependant is in receipt of a training allowance paid in connection with training provided or arranged by the Department for Employment and Learning under sections 2 and 3 of the Disabled Persons (Employment) Act or section 1(1) of the Employment and Training Act for which persons aged under 18 are eligible and for which persons aged 18 to 24 may be eligible;
- (c) if the non-dependant is a full-time student during a period of study or, if the non-dependant is not in remunerative work, during a recognised summer vacation appropriate to the non-dependant's course;
- (d) if the non-dependant is aged under 25 and in receipt of income support, an income-based jobseeker's allowance or an income-related allowance which does not include an amount under section 4(2)(b) of the Act;
- (e) in respect of whom a deduction in the calculation of a rent rebate or allowance falls to be made under regulation 72 of the Housing Benefit Regulations (non-dependant deductions);
- (f) to whom, but for regulation 71(5) (definition of non-dependant) paragraph (4) of that regulation would apply;
- (g) if the non-dependant is not residing with the claimant because the non-dependant has been a patient for a period in excess of 52 weeks, or is a prisoner, and for these purposes—
  - (i) "patient" has the meaning given by paragraph 5(13) and "prisoner" has the meaning given by regulation 69(2) (special cases); and
  - (ii) in calculating a period of 52 weeks as a patient, any 2 or more distinct periods separated by one or more intervals each not exceeding 28 days is to be treated as a single period; or
- (h) if the non-dependant is in receipt of state pension credit.

(8) In the case of a non-dependant to whom sub-paragraph (2) applies because that non-dependant is in remunerative work, there is to be disregarded from that non-dependant's gross income—

- (a) any attendance allowance or disability living allowance received by that non-dependant;

- (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 Fund (2006) which, had that non-dependant's income fallen to be calculated under regulation 104 (calculation of income other than earnings), would have been disregarded under paragraph 21 of Schedule 8 (income in kind); and
- (c) any payment which, had that non-dependant's income fallen to be calculated under regulation 104 would have been disregarded under paragraph 40 of Schedule 8 (payments made under certain trusts and certain other payments).

### **Continuity with income support, an income-based jobseeker's allowance or state pension credit**

20.—(1) For the purpose of providing continuity between income support, an income-based jobseeker's allowance or state pension credit and an employment and support allowance—

- (a) any housing costs which would, had the claimant been entitled to income support, an income-based jobseeker's allowance or state pension credit, have been existing housing costs and not new housing costs shall, despite the preceding provisions of this Schedule, be treated as existing housing costs, and any qualifications or limitations which would have applied to those costs had the award been an award of income support, an income-based jobseeker's allowance or state pension credit shall likewise apply to the costs in so far as they are met in an employment and support allowance;
- (b) had the award of an employment and support allowance been an award of income support or an income-based jobseeker's allowance and the housing costs which would then have been met would have included an additional amount met in accordance with paragraph 7 of Schedule 3 to the Income Support Regulations or, as the case may be, paragraph 18(1)(b) of Schedule 2 to the Jobseeker's Allowance Regulations, an amount equal to that additional amount must be added to the housing costs to be met under this Schedule, but that amount must be subject to the same qualifications and limitations as it would have been had the award been of income support or an income-based jobseeker's allowance; and
- (c) subject to paragraph 15(20), for the purposes of any linking rule or for determining whether any qualifying or other period is satisfied, any reference to an employment and support allowance in this Schedule must be taken also to include a reference to income support, an income-based jobseeker's allowance or state pension credit.

(2) Any loan which, had the claimant been entitled to income support and not an employment and support allowance, would have been a qualifying loan for the purposes of Schedule 3 to the Income Support Regulations by virtue of regulation 4 of the Income Support (General) (Amendment and Transitional) Regulations (Northern Ireland) 1995(184) (transitional protection) must be treated also as a qualifying loan for the purposes of paragraph 16 or 17, and for the purpose of determining whether a claimant would satisfy the provision of regulation 4(2) of those Regulations, a claimant in receipt of an income-related allowance must be treated as being in receipt of income support.

## SCHEDULE 7

Regulations 96(2) and 98(2)

### Sums to be disregarded in the calculation of earnings

1.—(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—

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- (a) any earnings, other than items to which sub-paragraph (2) applies, paid or due to be paid from that employment which terminated before the first day of entitlement to an income-related allowance;
  - (b) any earnings, other than a payment of the nature described in regulation 95(1)(e) or (l) (in so far as it relates to regulation 95(1)(e)) (earnings of employed earners), paid or due to be paid from that employment which has not been terminated where the claimant is not—
    - (i) engaged in remunerative work, or
    - (ii) suspended from employment.
- (2) This sub-paragraph applies to—
- (a) any payment of the nature described in regulation 95(1)(e); and
  - (b) any award, sum or payment of the nature described in—
    - (i) regulation 95(1)(g), (i) or (l) (in so far as it relates to regulation 95(1)(g) or (i)), or
    - (ii) Article 66 or 102 of the Employment Rights Order (guarantee payments and suspension from work: complaints to employment tribunals),

including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings.

2.—(1) In the case of a claimant to whom this paragraph applies, any earnings (other than a payment of the nature described in regulation 95(1)(e) or (l) (in so far as it relates to regulation 95(1)(e))) which relate to employment which ceased before the first day of entitlement to an income-related allowance whether or not that employment has terminated.

(2) This paragraph applies to a claimant who has been engaged in part-time employment as an employed earner or, had the employment been in Northern Ireland, would have been so engaged; but it does not apply to a claimant who has been suspended from employment.

3. If the claimant's partner has been engaged in remunerative work as an employed earner or, had the employment been in Northern Ireland, would have been so engaged, any earnings paid or due to be paid on termination of that employment by way of retirement but only if—

- (a) on retirement the partner is entitled to a retirement pension under the Contributions and Benefits Act; or
- (b) the only reason the partner is not entitled to a retirement pension under that Act is because the contribution conditions are not satisfied.

4. In the case of a claimant who has been engaged in remunerative work or part-time employment as a self-employed earner or, had the employment been in Northern Ireland, would have been so engaged and who has ceased to be so employed, from the date of the cessation of the claimant's employment any earnings derived from that employment except earnings to which regulation 92(2) (royalties, etc.) applies.

5. In the case of a claimant who is undertaking work which falls within one of the categories in regulation 45(2) to (4) any earnings derived from that work which do not exceed the limits specified for that work of £20 in regulation 45(2) or, as the case may be, £88·50 in regulation 45(3) or (4).

6. Where regulation 45(2), (3) or (4) applies to the claimant and that claimant's earnings are less than—

- (a) in a case to which regulation 45(2) applies, £20;
- (b) in a case to which regulation 45(3) or (4) applies, £88·50,

the earnings of the claimant's partner are to be disregarded to the extent that the claimant's earnings are less than £20 or, as the case may be, £88·50, but only up to a maximum of £20.

7.—(1) In a case to which this paragraph applies, £20; but notwithstanding regulation 83 (calculation of income and capital of members of claimant’s family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to the claimant’s 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) Subject to sub-paragraph (3), this paragraph applies in the case of a claimant to whom regulation 40(2)(a), (b) or (e), 43(1)(a), (d), (e) or (f) or (2) or 45(5) applies.

(3) Where a claimant is doing the work set out in regulation 40(2)(b) and is also undertaking any of the categories of work set out in regulation 45(2) to (4), this paragraph applies only to the extent that the claimant’s earnings are less than the limit of—

- (a) £20 set out in regulation 45(2); or
- (b) £88·50 set out in regulation 45(3) or (4),

as the case may be.

(4) This paragraph applies, in a case where the claimant’s partner is in part-time employment and paragraph 6 does not apply.

8. Notwithstanding the foregoing provisions of this Schedule, where 2 or more payments of earnings of the same kind and from the same source are to be taken into account in the same benefit week, because it has not been practicable to treat the payments under regulation 93(1)(b) (date on which income treated as paid) as paid on the first day of the benefit week in which they were due to be paid, there is to be disregarded from each payment the sum that would have been disregarded if the payment had been taken into account on the date on which it was due to be paid.

9. 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.

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

11. Any earnings which are due to be paid before the date of claim and which would otherwise fall to be taken into account in the same benefit week as a payment of the same kind and from the same source.

12. In the case of a claimant who—

- (a) has been engaged in employment as a member of any territorial or reserve force prescribed in Part 1 of Schedule 1; and
- (b) by reason of that employment has failed to satisfy any of the conditions for entitlement to an income-related allowance other than paragraph 6(1)(a) of Schedule 1 to the Act (income not in excess of the applicable amount),

any earnings from that employment paid in respect of the period in which the claimant was not entitled to an income-related allowance.

13. In the case of a person to whom regulation 6(5) of the Income Support Regulations (persons not treated as engaged in remunerative work) applies, any earnings.

14. In this Schedule—

“part-time employment” means, if the person were entitled to income support, employment in which the person is not to be treated as engaged in remunerative work under regulation 5 or 6(1) or (4) of the Income Support Regulations (persons treated, or not treated, as engaged in remunerative work);

“remunerative work”, for the purposes of this paragraph and paragraphs 1, 3 and 4, has the meaning given by regulation 5 of the Income Support Regulations, except for paragraphs (3B) and (4) of that regulation.

## SCHEDULE 8

Regulation 104(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 taken into account under regulation 104 (calculation of income other than earnings).
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 the claimant otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 108(2) (notional income).
3. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.
4. In the case of a payment under Parts 11 to 12ZB of the Contributions and Benefits Act(185) or any remuneration paid by or on behalf of an employer to the claimant who for the time being is unable to work due to illness or maternity or who is taking paternity leave or adoption leave—
  - (a) any amount deducted by way of primary Class 1 contributions under that Act;
  - (b) one half of any sum paid by way of a contribution towards an occupational or personal pension scheme.
5. In the case of a payment under Parts 11 to 12ZB of the Social Security Contributions and Benefits Act 1992(186) or any remuneration paid by or on behalf of an employer to the claimant who for the time being is unable to work due to illness or maternity or who is taking paternity leave or adoption leave—
  - (a) any amount deducted by way of primary Class 1 contributions under that Act;
  - (b) one half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.
6. Any guardian’s allowance.
- 7.—(1) Any child tax credit.  
(2) Any child benefit.
8. Any mobility component of disability living allowance.
9. Any concessionary payment made to compensate for the non-payment of—
  - (a) any payment specified in paragraph 8 or 11;
  - (b) an employment and support allowance, income support or a jobseeker’s allowance.
10. Any mobility supplement or any payment intended to compensate for the non-payment of such a supplement.

(185) Parts 12ZA and 12ZB were inserted by Articles 5 and 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

(186) Parts 12ZA and 12ZB were inserted by sections 2 and 4 of the Employment Act 2002 (c. 22)

11. Any attendance allowance or the care component of disability living allowance.

12. Any payment to the claimant as holder of the Victoria Cross or George Cross or any analogous payment.

13.—(1) Any payment by way of an education maintenance allowance made pursuant to Article 50 or 51 of the Education and Libraries Order(187) or a payment corresponding to such an education maintenance allowance made pursuant to section 3 of the Employment and Training Act.

(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 Order 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).

14.—(1) Any payment made pursuant to section 1 or 3 of the Employment and Training Act except a payment—

- (a) made as a substitute for an employment and support allowance;
- (b) of an allowance referred to in section 1(1B) of that Act(188);
- (c) 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 the claimant enhance that claimant’s employment prospects; or
- (d) made in respect of the cost of living away from home to the extent that the payment relates to rent or rates or, as the case may be, both for which housing benefit is payable in respect of accommodation which is not normally occupied by the claimant as that claimant’s 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 for which housing benefit is payable, or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d) (housing costs), of the claimant or, where the claimant is a member of a family, any other member of the claimant’s family, or any water charges for which that claimant or member is liable.

15.—(1) Subject to sub-paragraph (2) and paragraph 40, any relevant payment made or due to be made at regular intervals.

(2) Sub-paragraph (1) is not to apply to a payment which is made by a person for the maintenance of any member of that person’s family or of that person’s former partner or of that person’s children.

(3) In this paragraph “relevant payment” means—

- (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;
- (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

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(187) 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 2 of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1))

(188) Subsection (1B) was inserted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988

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- (e) a payment (not falling within heads (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.
16. Subject to paragraphs 38 and 39, £10 of any of the following—
- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 10 or 11);
  - (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 any power of Her Majesty otherwise than under a 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 sub-paragraphs (a) to (d);
  - (f) a pension paid by the government of a country outside the United Kingdom which is analogous to any of the pensions or payments mentioned in sub-paragraphs (a) to (d);
  - (g) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria;
  - (h) any widowed mother's allowance paid pursuant to section 37 of the Contributions and Benefits Act(189);
  - (i) any widowed parent's allowance paid pursuant to section 39A of that Act(190).
17. 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 that person's 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 accommodation on which it was secured as that person's home at the time the interest is paid,
- the amount, calculated on a weekly basis equal to—

(189) Section 37 was amended by paragraph 38 of Schedule 3 to the Tax Credits Act 2002 (c. 21), paragraph 72 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and paragraph 28 of Schedule 1 to the Child Benefit Act 2005 (c. 6)

(190) 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)) and amended by paragraph 40 of Schedule 3 to the Tax Credits Act 2002, paragraph 74 of Schedule 24 to the Civil Partnership Act 2004 and paragraph 29 of Schedule 1 to the Child Benefit Act 2005

- (i) where, or insofar as, section 369 of the Taxes Act(191) (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act,
- (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

18. Any payment made to the claimant by a person who normally resides with the claimant, which is a contribution towards that person's living and accommodation costs, except where that person is residing with the claimant in circumstances to which paragraph 19 or 20 refers.

19. Where the claimant occupies a dwelling as the claimant's home and the dwelling is also occupied by another person 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 that person's family—

- (a) where 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 that person's family, or by that person and a member of that person's family, is less than £20, the whole of that amount; or
- (b) where the aggregate of such payments is £20 or more per week, £20.

20. Where the claimant occupies a dwelling as the claimant's home and the claimant provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to—

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

21.—(1) Subject to sub-paragraphs (2) and (3), except where regulation 104(8)(b) (calculation of income other than earnings) or 107(3)(a) (notional income – income due to be paid or income paid to or in respect of a third party) applies, any income in kind.

(2) The exception under sub-paragraph (1) shall not apply where the income in kind is received from the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Fund (2006).

(3) The first exception under sub-paragraph (1) shall not apply where the claimant is the partner of a person subject to immigration control and whose partner is receiving support provided 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 and the income in kind is support provided in respect of essential living needs of the partner of the claimant and the claimant's dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to that Act.

(4) 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.

22.—(1) Any income derived from capital to which the claimant is or is treated under regulation 117 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraph 1, 2, 4 to 8, 10 or 16 of Schedule 9.

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(191)Section 369 was amended by section 81(4) of the Finance Act 1994 (c. 9) and paragraph 4 of Schedule 4 to the Finance Act 1999 (c. 16)

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(2) Income derived from capital disregarded under paragraph 2 or 4 to 8 of Schedule 9 but only to the extent of—

- (a) any mortgage repayments made in respect of the premises or land in the period during which that income accrued; or
- (b) any rates or water charges 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) The definition of “water charges” in regulation 2(1) is to apply to sub-paragraph (2) with the omission of “in so far as such charges are in respect of the dwelling occupied as the home”.

(4) 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(192).

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

24. 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.

25.—(1) Any payment made to the claimant in respect of a child or young person who is a member of the claimant’s family—

- (a) in accordance with regulations made under Article 59A of the Adoption (Northern Ireland) Order 1987(193) (permitted allowances);
- (b) which is a payment made by an authority in pursuance of paragraph 17 of Schedule 1 to the Children 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(194) or in accordance with a scheme approved by the Scottish Ministers under section 51A of the Adoption (Scotland) Act 1978(195) (schemes for payment of allowances to adopters);
- (d) which is a payment made by a local authority in pursuance of paragraph 15 of Schedule 1 to the Children Act 1989(196) (local authority contribution to a child’s maintenance where the child is living with a person as a result of a residence order);
- (e) in accordance with regulations made pursuant to section 14F of the Children Act 1989(197) (special guardianship support services).

(2) Any payment, other than a payment to which sub-paragraph (1)(c) applies, made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.

(3) In this paragraph and paragraphs 27 to 29 “authority” has the meaning given by Article 2 of the Children Order.

26. In the case of a claimant who has a child or young person—

- (a) who is a member of the claimant’s family; and
- (b) who is residing at an educational establishment at which that child or young person is receiving relevant education,

(192) 1925 c. 34

(193) 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))

(194) 2002 c. 38

(195) 1978 c. 28; section 51A was inserted by paragraph 25 of Schedule 2 to the Children (Scotland) Act 1995 (c. 36)

(196) 1989 c. 41; section 15(1) was amended by paragraph 10(1) of Schedule 16 to the Courts and Legal Services Act 1990 (c. 41) and paragraph 15 of Schedule 1 was amended by section 78(3) of the Civil Partnership Act 2004

(197) Section 14F was inserted by section 115(1) of the Adoption and Children Act 2002 (c. 38)

any payment made to that educational establishment, in respect of that child or young person's maintenance by or on behalf of a person who is not a member of the family or by a member of the family out of funds contributed for that purpose by a person who is not a member of the family.

27. Any payment made by—

- (a) an authority to a person who is caring for a child by virtue of arrangements made under Article 27(2)(a) of the Children 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(198), under Article 43(2) of that Order to a person who is caring for a child and 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 the claimant's partner for a person ("the person concerned"), who is not normally a member of the claimant's household but is temporarily in the claimant's care, by—

- (a) an authority;
- (b) a voluntary organisation;
- (c) the person concerned pursuant to Article 36(7) of the Health and Personal Social Services Order(199); or
- (d) a juvenile justice centre within the meaning of Article 51(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998.

29.—(1) Any payment made by an authority under Article 18, 34C, 34D or 35A of the Children Order(200) (general duty of an authority to promote the welfare of children or powers to grant financial assistance to persons looked after or in, or formerly in, its care).

(2) Subject to sub-paragraph (3), any payment (or part of a payment) made by an authority under Article 34D of the Children Order to a person ("A") which A passes on to the claimant.

(3) Sub-paragraph (2) only applies where A—

- (a) was formerly in the claimant's care;
- (b) is aged 18 or over; and
- (c) continues to live with the claimant.

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 on a loan which qualifies under paragraph 16 or 17 of Schedule 6 (housing costs – loans to acquire an interest in a dwelling, or for repairs and improvements to the dwelling, occupied as the home) and used to meet such repayments, to the extent that it does not exceed the aggregate of—

- (a) the amount, calculated on a weekly basis, of any interest on that loan which is in excess of the amount met in accordance with that Schedule;
- (b) the amount of any payment, calculated on a weekly basis, due on the loan attributable to the repayment of capital; and

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(198) S.I. 1998/1504 (N.I. 9)

(199) 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)) and amended by paragraph 2(3) to (5) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20)) and section 1(1) and (2) of the Health and Personal Social Services Act (Northern Ireland) 2002 (c. 9 (N.I.))

(200) 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 inserted by section 4 of that Act

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- (c) any amount due by way of premiums on—
  - (i) that policy, or
  - (ii) a policy of insurance taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as the claimant's home.

(2) This paragraph does not apply to any payment which is treated as possessed by the claimant by virtue of regulation 107(3)(c) (notional income – income due to be paid or income paid to or in respect of a third party).

31.—(1) Except where paragraph 30 or 32 applies, and subject to sub-paragraph (2), any payment made to the claimant which is intended to be used and is used as a contribution towards—

- (a) any payment due on a loan if secured on the dwelling occupied as the home which does not qualify under Schedule 6;
- (b) any interest payment or charge which qualifies in accordance with paragraphs 16 to 18 of that Schedule to the extent that the payment or charge is not met;
- (c) any payment due on a loan which qualifies under paragraph 16 or 17 of that Schedule attributable to the payment of capital;
- (d) any amount due by way of premiums on—
  - (i) an insurance policy taken out to insure against the risk of being unable to make the payments referred to in heads (a) to (c), or
  - (ii) a policy of insurance taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as the claimant's home;
- (e) the claimant's rent in respect of the dwelling occupied by the claimant as the home but only to the extent that it is not met by housing benefit; or the claimant's accommodation charge but only to the extent that the actual charge exceeds the amount payable by the Department of Health, Social Services and Public Safety under Article 36(3) of the Health and Social Services Order.

(2) This paragraph does not apply to any payment which is treated as possessed by the claimant by virtue of regulation 107(3)(c).

32.—(1) Subject to sub-paragraph (2), any payment received under an insurance policy, other than an insurance policy referred to in paragraph 30, taken out to insure against the risk of being unable to maintain repayments under a regulated agreement as defined for the purposes of the Consumer Credit Act 1974(201) or under a hire-purchase agreement or a conditional sale agreement as defined for the purposes of Part 6 of the Hire-Purchase Act (Northern Ireland)1966(202).

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

- (a) maintain the repayments referred to in sub-paragraph (1); and
- (b) meet any amount due by way of premiums on that policy.

33.—(1) Subject to sub-paragraphs (2) and (3), in the case of a claimant residing in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital, any payment, except a charitable or voluntary payment disregarded under paragraph 15 made to the claimant which is intended to be used and is used to meet the cost of maintaining the claimant in that home or hospital.

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(201) 1974 c. 39

(202) 1966 c. 42 (N.I.); Part 6 was substituted by paragraph 49 of Schedule 4 to the Consumer Credit Act 1974 (c. 39)

(2) This paragraph does not apply to a claimant for whom accommodation in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital is provided by the Department of Health, Social Services and Public Safety under Article 15 or 36 of the Health and Personal Social Services Order.

- (3) The amount to be disregarded under this paragraph is not to exceed the difference between—
- (a) the claimant's applicable amount; and
  - (b) the weekly charge for the accommodation.

34. Any social fund payment made pursuant to Part 8 of the Contributions and Benefits Act.

35. Any payment of income which under regulation 112 (income treated as capital) is to be treated as capital.

36. Any payment under Part 10 of the Contributions and Benefits Act (pensioner's Christmas bonus).

37. Any payment which is due to be paid before the date of claim which would otherwise fall to be taken into account in the same benefit week as a payment of the same kind and from the same source.

38. The total of a claimant's income or, if the claimant is a member of a family, the family's income and the income of any person which the claimant is treated as possessing under regulation 83(3) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulations 133(2)(b), 134(1)(c) (calculation of covenant income), 137(1) and (2) (treatment of student loans) and 138(3) (treatment of payments from access funds) and paragraph 16 is in no case to exceed £20 per week.

39. Notwithstanding paragraph 38 where 2 or more payments of the same kind and from the same source are to be taken into account in the same benefit week, there is to be disregarded from each payment the sum which would otherwise fall to be disregarded under this Schedule; but this paragraph is to apply only in the case of a payment which it has not been practicable to treat under regulation 93(1)(b) (date on which income is treated as paid) as paid on the first day of the benefit week in which it is due to be paid.

40.—(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 Fund (2006).

(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 that person is not, or where that person has died was not, estranged or divorced or with whom that person 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

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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 that person is not estranged or divorced or with whom that person 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 full-time student who has not completed full-time education and had no parent or step-parent, to that person's 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 that person's death ("the relevant date") had no partner or former partner from whom that person was not estranged or divorced or with whom that person had formed a civil partnership that had not been dissolved, nor any child or young person who was 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 relevant date was a child, a young person or a full-time student who had not completed full-time education and had no parent or step-parent, to that person's 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 to which sub-paragraph (1) refers.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts is to be construed as including a reference to the Fund, the Eileen Trust, the Skipton Fund and the London Bombings Relief Charitable Fund.

41. Any payment made by the Department to compensate for the loss (in whole or in part) of entitlement to housing benefit.

42. Any payment made to a juror or a 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.

43. Any payment in consequence of a reduction of liability for rates under Article 30A of the Rates (Northern Ireland) Order 1977(203) (relief in respect of dwellings) or reduction of council tax under section 13 or 80 of the Local Government Finance Act 1992(204) (reduction of liability for council tax).

44.—(1) Any payment or repayment made under regulation 5, 6 or 11 of the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 2004(205) (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).

45. Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to Article 13 of the Social Security (Northern Ireland) Order 1988(206) in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins).

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

47. Any payment (other than a training allowance) made under the Disabled Persons (Employment) Act to assist disabled persons to obtain or retain employment despite their disability.

48. Any supplementary pension under Article 23(2) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(207) (pensions to widows, widowers or surviving civil partners) and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under that Order.

49. Where the claimant is in receipt of any benefit under Part 2, 3 or 5 of the Contributions and Benefits 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 4 (increases for dependants) or section 106(a) (unemployability supplement) of that Act or the rate of that pension under that Order where the dependant in respect of whom the increase is paid is not a member of the claimant's family.

50. 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.

51.—(1) Any payment which is—

(a) made under any of the Dispensing Instruments to a widow, widower or surviving civil partner of a person—

(i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown, and

(ii) whose service in such capacity terminated before 31st March 1973; and

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(203) S.I. 1977/2157 (N.I. 28); Article 30A was inserted by Article 14 of the Rates (Amendment) (Northern Ireland) Order 2006 (S.I. 2006/2954 (N.I. 18))

(204) 1992 c.14; section 13 was amended by paragraph 42 of Schedule 7 to the Local Government Act 2003 (c. 26) and section 80 was amended by paragraph 176(4)(a) and (b) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c. 39)

(205) S.R. 2004 No. 91

(206) S.I. 1988/594 (N.I. 2); Article 13 was substituted by Article 3 of the Food Benefit Schemes (Northern Ireland) Order 2003 (S.I. 2003/3202 (N.I. 19))

(207) S.I. 2006/606

(208) S.I. 1983/686; Article 27(3) and paragraph 1(c) of Schedule 4 were added by Articles 2 and 3 of S.I. 1994/2021 respectively and Schedule 4 was substituted by Schedule 3 to S.I. 2006/765

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(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” 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).

52. Any payment made under regulations made under section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002(209).

53.—(1) Any payment specified in sub-paragraph (2) to a claimant who was formerly a student and who has completed the course in respect of which those payments were made.

(2) The payments specified for the purposes of sub-paragraph (1) are—

- (a) any grant income and covenant income as defined for the purposes of Chapter 10 of Part 10;
- (b) any student loan as defined in Chapter 10 of Part 10;
- (c) any contribution as defined in Chapter 10 of Part 10 which—
  - (i) is taken into account in ascertaining the amount of a student loan referred to in head (b), and
  - (ii) has been paid.

54.—(1) Subject to sub-paragraph (2), in the case of a person who is receiving, or who has received, assistance under the self-employment route, any payment to the 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 purposes of establishing or carrying on the commercial activity,

in respect of which such assistance is or was received.

(2) Sub-paragraph (1) is to apply only in respect of payments which are paid to that person from the special account as defined for the purposes of Chapter 5 of Part 10.

55. Any payment made with respect to a person on account of the provision of accommodation, aftercare or other personal social services to which Articles 15 and 36 of the Health and Personal Social Services Order refer which falls to be treated as notional income under regulation 107(6) (payments made in respect of a person residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital).

56.—(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, rent or rates for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d) (housing costs), of the claimant or, where the claimant is a member of a family, any other member of the claimant’s family, or water charges for which that claimant or member is liable.

(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.

57.—(1) Subject to sub-paragraph (3), any payment of child maintenance where the child or young person in respect of whom the payment is made is a member of the claimant's family except where the person making the payment is the claimant or the claimant's partner.

(2) For the purposes of sub-paragraph (1), where more than one payment of child maintenance—

- (a) in respect of more than one child or young person; or
- (b) made by more than one person in respect of a child or young person,

falls to be taken into account in any week, all such payments are to be aggregated and treated as if they were a single payment.

(3) No more than £10 is to be disregarded in respect of each week to which any payment of child maintenance is attributed in accordance with regulations 90, 91, 93 and 94 (calculation of income) or 127 to 129 (treatment of child support maintenance).

(4) In this paragraph, "child maintenance" has the meaning prescribed for the purposes of section 72A of the Administration Act(210) (payment of benefit where maintenance payments collected by Department) and is to include any payment made by the Department in lieu of such maintenance.

58. In the case of a person to whom regulation 6(5) of the Income Support Regulations (persons not treated as in remunerative work) applies, the whole of that person's income.

59. Any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations (Northern Ireland) 2001(211).

60. Any payment made by the Housing Executive to or on behalf of the claimant or the claimant's partner relating to a service which is provided to develop or sustain the capacity of the claimant or the claimant's partner to live independently in the claimant's or the claimant's partner's accommodation.

61. Any housing benefit to which the claimant is entitled.

## SCHEDULE 9

Regulation 111(2)

### Capital to be disregarded

1. The dwelling occupied as the home but, notwithstanding regulation 83 (calculation of income and capital of members of claimant's family and of a polygamous marriage), only one dwelling is to be disregarded under this paragraph.

2. Any premises or land acquired for occupation by the claimant which that claimant intends to occupy as the 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 or land formerly occupied by the claimant as the home; or
- (b) any premises or land which the claimant continues to occupy as the home and which were occupied by the claimant as the home immediately before the compulsory acquisition of those premises or land from the claimant under any statutory provision,

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(210) Section 72A was inserted by Article 18 of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702(N.I. 13))

(211) S.R. 2001 No. 216

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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 or land occupied in whole or in part by—

- (a) a partner or relative of a single claimant or any member of the family as the home where that person is aged 60 or over or is incapacitated;
- (b) the former partner of a claimant as the home; but this provision is not to apply where the former partner is a person from whom the claimant is estranged or divorced or with whom the person formed a civil partnership that has been dissolved.

5. Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following the claimant's estrangement or divorce from, or dissolution of the claimant's civil partnership with, the claimant's former partner, that dwelling for a period of 26 weeks from the date on which the claimant ceased to occupy that dwelling or, where that dwelling is occupied as the home by the former partner who is a lone parent, for as long as it is so occupied.

6. 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 the claimant first took such steps, or such longer period as is reasonable in the circumstances to enable the claimant to dispose of those premises or land.

7. Any premises or land which the claimant intends to occupy as the home, and in respect of which that claimant 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 the claimant first sought such advice or first commenced such proceedings whichever is earlier, or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of those premises or land.

8. Any premises or land which the claimant intends to occupy as the 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 reasonable in the circumstances to enable those repairs or alterations to be carried out and the claimant to commence occupation of the premises.

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

10.—(1) The assets of any business owned in whole or in part by the claimant and for the purposes of which that claimant is engaged as a self-employed earner or, if the claimant 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 that claimant—

- (a) is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but
- (b) intends to become engaged or, as the case may be, re-engaged as a self-employed earner in that business as soon as the claimant 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 an income-related allowance is made, or is treated as made, or, if it is unreasonable to expect the claimant to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable the claimant 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.

11.—(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 paragraph 8, 10 or 11 of Schedule 8 (other income to be disregarded);
- (b) an income-related allowance, an income-related benefit or an income-based jobseeker's allowance, child tax credit or working tax credit;
- (c) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations (Northern Ireland) 2001,

but only for a period of 52 weeks from the date of the receipt of the 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 any one of the specified payments, benefits or allowances, amounts to £5,000 or more (referred to in this sub-paragraph and 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(212); and
- (b) received by the claimant in full on or after 14th October 2001,

sub-paragraph (1) is to 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 an income-related allowance, for the remainder of that award if that is a longer period.

(3) For the purposes of sub-paragraph (2), “the award of an income-related allowance” means—

- (a) the award either of an income-related allowance, income support or of an income-based jobseeker's allowance in which the relevant sum (or first part thereof where it is paid in more than one instalment) is received; and
- (b) where that award is followed by one or more further awards which in each case may be either of an income-related allowance, income support or of an income-based jobseeker's allowance and which, or each of which, begins immediately after the end of the previous award, such further awards until the end of the last such award, provided that for any such further awards the claimant—
  - (i) is the person who received the relevant sum,
  - (ii) is the partner of the person who received the relevant sum, or was that person's partner at the date of that person's death, or
  - (iii) in the case of a joint-claim jobseeker's allowance, is a joint-claim couple either member or both members of which received the relevant sum.

(4) In sub-paragraph (3)(b) “joint-claim couple” and “joint-claim jobseeker's allowance” have the meanings given by Article 2(2) of the Jobseekers Order(213).

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(212) The definition of “official error” was substituted by paragraph 2(b) of Schedule 4 to [S.R. 2001 No. 176](#) and amended by regulation 2(2)(a) of [S.R. 2002 No. 189](#)

(213) The definitions of “joint-claim couple” and “joint-claim jobseeker's allowance” were inserted by paragraph 2(3) of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

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12. 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 improvements to the home,

and 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 enable the claimant to effect the repairs, replacement or improvements.

13. 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 is reasonable in the circumstances to complete the purchase.

14. Any personal possessions except those which had or have been acquired by the claimant with the intention of reducing that claimant's capital in order to secure entitlement to an employment and support allowance, a jobseeker's allowance or income support or to increase the amount of those benefits.

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

16. 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.

17.—(1) Subject to sub-paragraph (2), 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) 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 consequences of that personal injury;
- (b) does not apply to any subsequent payment made to the claimant 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 purpose 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.

18. The value of the right to receive any income under a life interest.

19. The value of the right to receive any income which is disregarded under paragraph 9 of Schedule 7 or paragraph 23 of Schedule 8 (earnings or other income to be disregarded).

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

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

22.—(1) Any payment made by an authority under Article 18, 34C, 34D or 35A of the Children Order (general duty of an authority to promote the welfare of children or powers to grant financial assistance to persons looked after or in, or formerly in, its care).

(2) Subject to sub-paragraph (3), any payment (or part of a payment) made by an authority under Article 34D of the Children Order to a person (“A”) which A passes on to the claimant.

(3) Sub-paragraph (2) only applies where A—

- (a) was formerly in the claimant’s care,
- (b) is aged 18 or over, and
- (c) continues to live with the claimant.

(4) In this paragraph “authority” has the meaning given by Article 2 of the Children Order.

23. Any social fund payment made pursuant to Part 8 of the Contributions and Benefits Act.

24. Any refund of tax which falls to be deducted under section 369 of the Taxes Act (mortgage interest payable under deduction of tax) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements in the home.

25. Any capital which under regulation 105 or 137 (capital treated as income or treatment of student loans) is to be treated as income.

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

27.—(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 Fund (2006), 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 the person is not, or where that person has died was not, estranged or divorced or with whom the person 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.

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(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 the person is not estranged or divorced or with whom the person 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 full-time student who has not completed full-time education and had no parent or step-parent, to that person's 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 the person's death ("the relevant date") had no partner or former partner from whom the person was not estranged or divorced or with whom the person had formed a civil partnership that had not been dissolved, nor any child or young person who was 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 relevant date was a child, a young person or a full-time student who had not completed full-time education and had no parent or step-parent, to that person's 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 is to be construed as including a reference to the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund.

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

29. The value of any funds held under a personal pension scheme.

30. 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.

31. Any payment in kind made by a charity or under the Macfarlane Trust, Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Fund (2006).

32. Any payment made pursuant to section 1 of the Employment and Training Act(214) but only for the period of 52 weeks beginning on the date of receipt of the payment.

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

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(214)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))

34. Any payment made to a juror or a 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.

35. Any payment in consequence of a reduction of liability for rates under Article 30A of the Rates (Northern Ireland) Order 1977 (rate relief in respect of dwellings) or 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) or, but only for a period of 52 weeks from the date of the receipt of the payment.

36. Any grant made in Great Britain to the claimant in accordance with a scheme under section 129 of the Housing Act 1988 or section 66 of the Housing (Scotland) Act 1988(215) (schemes for payments to assist local housing authorities and local authority tenants to obtain other accommodation) which is to be used—

- (a) to purchase premises intended for occupation as the claimant's home; or
- (b) to carry out repairs or alterations which are required to render premises fit for occupation as the claimant's home,

for a period of 26 weeks from the date on which the claimant 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 the claimant's home.

37.—(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.

38. Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to Article 13 of the Social Security (Northern Ireland) Order 1988 in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins) but only for a period of 52 weeks from the date of receipt of the payment.

39. Any payment made under a scheme established by the Secretary of State to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of receipt of the payment.

40. Any arrears of supplementary pension which is disregarded under paragraph 48 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 50 or 51 of that Schedule, but only for a period of 52 weeks from the date of receipt of the arrears.

41. Any payment (other than a training allowance) made under the Disabled Persons (Employment) Act to assist disabled persons to obtain or retain employment despite their disability.

42.—(1) Any sum 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(216) or by a County Court under Order 44 of the County Court Rules (Northern Ireland) 1981(217) or Article 21 of the County Courts (Northern Ireland) Order 1980(218);

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(215) 1988 c. 43

(216) S.R. 1980 No. 346; Order 109 was added by S.R. 1986 No. 184

(217) S.R. 1981 No. 225

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- (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 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.
43. Any payment to the claimant as holder of the Victoria Cross or George Cross.
44. In the case of a person who is receiving, or who has received, assistance under the self-employment route, any sum 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.
- 45.—(1) Any payment for 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, rent or rates for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d) (housing costs), of the claimant or, where the claimant is a member of a family, any other member of the claimant’s family, or any water charges for which that claimant or member is liable.
- (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.
46. 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.
47. In the case of a person to whom regulation 6(5) of the Income Support Regulations (persons not treated as in remunerative work) applies, the whole of the claimant’s capital.
- 48.—(1) Any payment by way of an education maintenance allowance made pursuant to Article 50 or 51 of the Education and Libraries Order(219) or a payment corresponding to such an education maintenance allowance made pursuant to section 3 of the Employment and Training Act.
- (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 Order, 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).

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(218) S.I. 1980/397 (N.I. 3)

(219) 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 2 of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1))

49.—(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 the place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (d) a member of the diagnosed person's family (other than that person's partner) or a person who was a member of the diagnosed person's family (other than that person's 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) two years after that date, or
  - (ii) on the day before the day on which that person—
    - (aa) ceases receiving full-time education, or
    - (bb) attains the age of 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 the place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (c) a member of the diagnosed person's family (other than that person's partner) or a person who was a member of the diagnosed person's family (other than that person's 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) two years after that date, or
  - (ii) on the day before the day on which that person—

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- (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 the diagnosed person’s family; or
  - (c) acting in the place of the diagnosed person’s parents,

at the date of the diagnosed person’s death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person 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 that person’s 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.

50. The amount of a payment, other than a war pension within the meaning of section 25 of the Social Security Act 1989(220), 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.

51.—(1) Any payment made by the Housing Executive to or on behalf of the claimant or the claimant’s partner relating to a service which is provided to develop or sustain the capacity of the claimant or the claimant’s partner to live independently in the claimant’s or the claimant’s partner’s accommodation.

52. Any payment made under regulations made under section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002(221).

53. Any payment made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002(222).

54. Any payment made to the claimant in accordance with regulations made pursuant to section 14F of the Children Act 1989(223) (special guardianship support services).

55. 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.

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(220) 1989 c. 24

(221) 2002 c. 6 (N.I.)

(222) 2002 c. 38

(223) 1989 c. 41; section 14F was inserted by section 115 of the Adoption and Children Act 2002 (c. 38)

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for employment and support allowance, consisting of a contributory allowance and an income-related allowance, which will replace incapacity benefit, and income support on the grounds of incapacity.

Part 1 contains provisions relating to the citation, commencement and interpretation of the Regulations and to the rounding of fractions.

Part 2 makes provision for the assessment phase which will normally last for 13 weeks from the start of the claim and which most claimants will be required to serve.

Part 3 deals with conditions of entitlement to the contributory allowance including special provision for young people who are unable to satisfy the contribution conditions.

Part 4 deals with conditions of entitlement to the income-related allowance, dealing in particular with the circumstances in which a claimant is to be treated as receiving or not receiving education.

Part 5 deals with the determination of whether or not a claimant has limited capability for work and the circumstances in which a claimant is to be treated as having or not having limited capability for work in accordance with the assessment set out in Schedule 1.

Part 6 deals with the determination of whether or not a claimant has limited capability for work-related activity and the circumstances in which a claimant is to be treated as having limited capability for work-related activity in accordance with the assessment set out in Schedule 2.

Part 7 provides for the circumstances in which the work a claimant does affects the claimant's entitlement to employment and support allowance.

Part 8 deals with conditionality. Chapter 1 provides for the requirement to attend work-focused health-related assessments. Chapter 2 provides for the requirement to attend work-focused interviews. Chapter 3 provides for a reduction in employment and support allowance in respect of claimants who do not engage in work-focused health-related assessments or work-focused interviews. Chapter 4 provides for notification under this Part and Chapter 5 provides for the modification of the sections 11(1) and 12(1) of the Welfare Reform Act (Northern Ireland) 2007 ("the Act") in relation to advance claims.

Part 9 deals with amounts of the allowance. Chapter 1 provides for prescribed amounts which are set out in Schedules 3, 4, and 5. Chapter 2 provides for deductions from the contributory allowance. Chapter 3 deals with the effect of statutory maternity pay, statutory adoption pay and statutory paternity pay on the contributory allowance.

Part 10 deals with the calculation of a claimant's income and capital. Chapter 1 deals with general provisions. Chapter 2 provides for the calculation of income. Chapter 3 deals with employed earners. Chapter 4 deals with self-employed earners. Chapter 5 deals with participants in the self-employment route. Chapter 6 deals with the calculation of other income. Chapter 7 deals with the calculation of capital. Chapter 8 provides for the treatment of liable relative payments. Chapter 9 deals with the treatment of payments of child support maintenance. Chapter 10 deals with modification of the provisions which apply for purposes of calculating of the income and capital of students. Schedule 6 provides for sums which are to be disregarded in the calculation of earnings. Schedule 7 provides for sums which are to be disregarded in the calculation of income other than earnings. Schedule 8 provides for capital which is to be disregarded.

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Part 11 makes supplementary provision. Chapter 1 with miscellaneous provisions, such the number of days at the start of a period of limited capability for work that a claimant must wait a before becoming entitled to employment and support allowance, rules which enable two periods of limited capability for work separated by not more than 12 weeks to be linked together, advance awards and recovery orders. Chapter 2 provides specific rules for “work or training beneficiaries” which extend the normal linking period for certain claimants who leave employment and support allowance for work to 104 weeks. Chapter 3 deals with temporary absence from Northern Ireland. Chapter 4 provides for the circumstances in which a person is to be treated as being or not being a member of the claimant’s household.

Part 12 provides for the circumstances in which a claimant may be disqualified from receiving employment and support allowance and includes provision to deal with the situation where this would cause hardship.

Part 13 provides for cases where a claimant may suffer hardship because income which is not readily available is treated as being possessed by the claimant.

Part 14 provides for the calculation of the amounts payable for entitlement to employment and support allowance for periods of less than a week.

Sections 2(1)(a) and (c) and (4)(a) and (c), 3(1)(c), (2)(b) and (d) and (3), 4(2)(a), (3) and (6)(a) and (c), 5(2) and (3), 8(1) to (3), (4)(a) and (b), (5) and (6), 9(1) to (3) and (4)(a) and (b), 11(1), (2) (a) to (g), (3) to (5), (6)(a) and (7)(c), 12(1), (2)(a) to (h) and (3) to (7), 14(1) and (2)(a) and (b), 16(2)(a) and (4), 17, 18(1),(2) and (4), 20(2) to (7), 23(1) and (3), 24(1), (2)(b) and (3), 25(1) and (2) and 26(1) of, and paragraphs 1(4), 3(2), 4(1)(a) and (c), (3) and (4) and 6(1)(b), (2) to (5), (7) and (8) of Schedule 1 and paragraphs 1 to 7, 8(1), 9, 10, 12 and 14 of Schedule 2 to, the Act, some of the enabling provisions under which these Regulations are made, were brought into operation on 1st July 2008 for the purpose of authorising the making of regulations and on 27th October 2008 for all other purposes by virtue of the Welfare Reform (2007 Act) (Commencement No. 5) Order (Northern Ireland) 2008 ([S.R. 2008 No. 276 \(C. 14\)](#)).

As these Regulations are made by virtue of, or consequential upon, provisions of Part 1 of the Act and are made before the end of the period of 6 months from the commencement of those provisions, they are, accordingly, exempt, by virtue of section 150(5)(b) of Social Security Administration (Northern Ireland) Act 1992, from prior reference to the Social Security Advisory Committee.