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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 270**

The Discretionary Support Regulations (Northern Ireland) 2016

PART 4

Income and earnings

**Calculation of income**

**15.**—(1) For the purposes of these Regulations an annual income threshold will apply, above which a claimant may not normally be eligible for discretionary support, unless Schedule 3 applies.

(2) For the purposes of this Part the “Annual income threshold” will be based on a working week of 40 hours over 52 weeks paid at the hourly rate set by the National Minimum Wage Regulations 2015(1) for a person over the age of 25, in force on the date of a claim.

(3) For the purposes of this Part the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraph (2), be the claimant’s gross income and any capital treated as income under regulation 16.

(4) There shall be disregarded from the calculation of a claimant’s gross income under paragraph (1), any sum, where applicable, specified in Schedule 3.

(5) The income of a child or young person who is a member of the claimant’s immediate family shall not be treated as income of the claimant for the purposes of this regulation.

**Capital treated as income**

**16.**—(1) Any capital payable by instalments which are outstanding on the first day in respect of which discretionary support is payable or the date of determination of a claim, whichever is earlier, shall be treated as income.

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

**Notional income**

**17.**—(1) A claimant shall be treated as possessing income of which they have deprived themselves for the purpose of securing entitlement to discretionary support or increasing the amount of that support.

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any benefit related to employment which may be payable to the claimant who is not required to be available for employment,

income which would become available to the claimant upon a claim being made, but which has not been acquired by them, shall be treated as possessed by them but only from the date on which it would be so acquired.

(3) 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 a claimant but has not been paid to them shall be treated as possessed by the claimant.

(4) Where a claimant's earnings are not ascertainable at the time of the determination of the claim, or of any subsequent review, a discretionary support officer shall 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.

(5) 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,

a discretionary support officer shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the discretionary support officer that the means of the person are insufficient for them to pay more for the service; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary body or is a volunteer if the discretionary support officer is satisfied that it is reasonable for them to provide the services free of charge.