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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 461**

**HOUSING**

**The Housing Grants (Assessment of Contributions) (Scotland) Regulations 2003**

*Made* - - - - - *29th September 2003*

*Coming into force* - - - - - *1st October 2003*

The Scottish Ministers in exercise of the powers conferred by section 240A of the Housing (Scotland) Act 1987(1) and all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 240A(3) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**PART I**  
**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Housing Grants (Assessment of Contributions) (Scotland) Regulations 2003 and shall come into force on 1st October 2003.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Housing (Scotland) Act 1987;

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(2);

“allowable deductions” means the deductions and allowances specified in Chapter VII of Part II;

“application” means, as the case may be, an application for improvement grant, an application for repairs grant or an application for grant for a means of escape from fire in a house in multiple occupation, all under Part XIII of the Act;

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(1) 1987 c. 26. Section 240A was inserted by the [Housing \(Scotland\) Act 2001 \(asp 10\)](#), section 99.  
(2) 1992 c. 4 as amended by the [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), Schedule 6.

“assessment period” means the period of 52 weeks which ends immediately before the date of the application;

“attendance allowance” means—

- (a) an attendance allowance under section 64 of the 1992 Act;
- (b) an increase of disablement pension under section 104 of the 1992 Act;
- (c) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part II of Schedule 8 to the 1992 Act (constant attendance allowance);
- (d) an increase of an allowance which is payable in respect of constant attendance under a scheme under, or having effect under, paragraph 4 of Part I of Schedule 8 to the 1992 Act<sup>(3)</sup> (industrial diseases benefit schemes);
- (e) any payment based on need for attendance which is paid as part of a war disablement pension;
- (f) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983<sup>(4)</sup> or any analogous payment;

“charitable body” means any body—

- (a) to which the Commissioners have given intimation, which has not previously been withdrawn, that relief will be due under section 505 of the Income and Corporation Taxes Act 1988<sup>(5)</sup> in respect of income of the body which is applicable and applied to charitable purposes only, being a body which is—
  - (i) established under the law of Scotland; or
  - (ii) which is managed wholly or mainly in or from Scotland; or
- (b) which is—
  - (i) registered as a charity in England and Wales under section 3 of the Charities Act 1993<sup>(6)</sup>; or
  - (ii) a charity which is not required to register by virtue of subsection (5) of that section;

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

“college of further education” has the meaning given in Part I of the Further and Higher Education (Scotland) Act 1992<sup>(7)</sup>;

“disability element of the working tax credit” has the meaning given in section 11(3) and (4) of the Tax Credits Act 2002<sup>(8)</sup>;

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

“disabled person’s tax credit” means a disabled person’s tax credit under section 129 of the 1992 Act<sup>(9)</sup>;

“employed earner” shall be construed in accordance with section 2(1)(a) of the 1992 Act and also includes a person who is in receipt of a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay or statutory maternity pay;

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(3) See section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975 (c. 16) which was repealed, with savings, by the Social Security (Consequential Provisions) Act 1992 (c. 6).

(4) S.I.1983/686; relevant amending instruments are S.I. 1983/1164 and 1984/1675.

(5) 1988 c. 1.

(6) 1993 c. 10.

(7) 1992 c. 37.

(8) 2002 c. 21.

(9) See section 1 of, and paragraphs 1 and 2(h) of Schedule 1 to, the Tax Credits Act 1999 (c. 10).

“guarantee credit” shall be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002<sup>(10)</sup>;

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

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

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

“income-based jobseeker’s allowance” means an income-based jobseeker’s allowance by virtue of section 1(4) of the Jobseekers Act 1995<sup>(11)</sup>;

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

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

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

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

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

“institution within the higher education sector” shall be construed as in Part II of the Further and Higher Education (Scotland) Act 1992<sup>(12)</sup>;

“liferenter” means any liferenter or joint liferenter of the house to which an application relates;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(13)</sup>;

“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988 by virtue of section 832(1) of that Act<sup>(14)</sup>;

“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;

“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 Trusts” means the MacFarlane Trust, the MacFarlane (Special Payments) Trust and the MacFarlane (Special Payments) (No. 2) Trust;

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(10) 2002 c. 16.

(11) 1995 c. 18.

(12) 1992 c. 37.

(13) 1994 c. 39.

(14) 1988 c. 1; the definition of “lower rate” was inserted by the Finance Act 1992 (c. 20), section 9.

“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Part VIII of the Employment Rights Act 1996<sup>(15)</sup>;

“mobility supplement” means a supplement under article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983<sup>(16)</sup> (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983<sup>(17)</sup> or any payment intended to compensate for the non-payment of such a supplement;

“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 Act 1993<sup>(18)</sup>;

“owner” means any owner or joint owner of the house to which an application relates;

“payment” includes part of a payment;

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993 and, in the case of a self-employed earner, includes a scheme approved by the Board of Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988<sup>(19)</sup>;

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

“relevant person” has the meaning given by regulation 4;

“rental income” means any income received (less any allowances which are deductible for income tax purposes) in return for allowing a person to occupy any property owned by the relevant person;

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

“retirement pension” means a category A, B, C or D pension payable in terms of sections 44 to 46, 48A to 51 and 78 of the 1992 Act;

“self-employed earner” shall be construed in accordance with section 2(1)(b) of the 1992 Act;

“severe disablement allowance” means severe disablement allowance under section 68 of the 1992 Act<sup>(20)</sup>;

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

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

“tenant” means any tenant or joint tenant of the house to which an application relates;

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

“war disablement pension” has the meaning given in section 150(2) of the 1992 Act.

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<sup>(15)</sup> 1996 c. 18.

<sup>(16)</sup> S.I. 1983/883; article 26A was inserted by S.I. 1983/1116.

<sup>(17)</sup> S.I. 1983/686; article 25A was inserted by S.I. 1983/1164.

<sup>(18)</sup> 1993 c. 48.

<sup>(19)</sup> 1988 c. 1.

<sup>(20)</sup> Section 68 was amended by section 9 of, paragraph 18 of Schedule 1 to and Schedule 2 to, the Social Security (Incapacity for Work) Act 1994 (c. 18).

- (2) In these Regulations, unless the context otherwise requires—
- (a) any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations;
  - (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in that regulation; and
  - (c) any reference to a numbered Schedule is a reference to the Schedule to these Regulations bearing that number.

## PART II

### ASSESSMENT OF CONTRIBUTIONS – OWNER AND TENANT OCCUPIERS

#### CHAPTER I:

#### GENERAL

#### **Applications to which Part II applies**

3. The classes of application to which this Part of these Regulations apply are—
- (a) the application by an owner where paragraph (d) or (e) does not apply and—
    - (i) that owner occupies or intends to occupy the house to which the application relates as that owner's main or only residence; or
    - (ii) any member of that owner's family occupies or intends to occupy that house as that member's main or only residence;
  - (b) the application by a tenant in terms of section 236A of the Act where paragraph (d) or (e) does not apply and—
    - (i) that tenant occupies or intends to occupy the house to which the application relates as that tenant's main or only residence; or
    - (ii) any member of that tenant's family occupies or intends to occupy that house as that member's main or only residence;
  - (c) the application by a liferenter where paragraph (d) or (e) does not apply and that liferenter is responsible for the works detailed in the application;
  - (d) the application by a disabled occupant in respect of works to which section 236(2)(a)(ii) of the Act applies and where paragraph (e) does not apply;
  - (e) the application which relates to improvement works to which section 236(2)(a)(ii) of the Act applies where—
    - (i) the disabled occupant is below the age of 16; and
    - (ii) the application is made by a person who, in respect of that disabled occupant—
      - (aa) is in receipt of child benefit; or
      - (bb) if there is no such person—
        - (aaA) where only one claim for child benefit has been made in respect of that disabled occupant, the person who made that claim; or
        - (bbB) in any other case the person who has the primary responsibility for that disabled occupant.

CHAPTER II:  
ASSESSMENT OF APPLICANT'S CONTRIBUTIONS

**Assessment of applicant's contributions**

4.—(1) The amount to be treated as the applicant's contribution for the purposes of an application as mentioned in regulation 3 shall be assessed by—

- (a) comparing the total applicable income to the relevant range of income specified in column 1 of Schedule 1; and
- (b) multiplying the approved expense by the corresponding percentage figure specified opposite that range of income in column 2 of that Schedule.

(2) For the purposes of this regulation "total applicable income" means the sum of the incomes of all relevant persons over the assessment period reduced by the sum of any allowable deductions in respect of those relevant persons.

(3) The relevant persons are—

- (a) the applicant;
- (b) any spouse of the applicant who is living with or intending to live with the applicant including all spouses in polygamous marriages; and
- (c) except in the case of an application as specified in regulation 3(d) or 3(e), any joint owner, joint tenant or joint liferenter of the applicant and any spouse of such joint owner, joint tenant or joint liferenter who is living with or intending to live with such joint owner, joint tenant or joint liferenter including all spouses in polygamous marriages.

(4) For the purpose of paragraph (3)(b) and (c) a spouse shall be treated as not living with or intending to live with the applicant or joint owner, joint tenant or joint liferenter of the applicant where that spouse is living away from the applicant or joint owner, joint tenant or joint liferenter, and does not intend to resume living with the applicant or joint owner, joint tenant or joint liferenter.

CHAPTER III:  
INCOME – GENERAL

**Determination of income of relevant person**

5. The income of a relevant person shall be determined in accordance with the following provisions of this Chapter and Chapters IV to VI.

**Determination of income over the assessment period**

6. The income of each relevant person shall be determined by aggregating income over the assessment period from—

- (a) net earnings from employment as an employed earner, determined in accordance with this Chapter and Chapter IV of this Part;
- (b) net earnings from employment as a self employed earner, determined in accordance with this Chapter and Chapter V of this Part; and
- (c) income other than earnings, determined in accordance with this Chapter and Chapter VI of this Part.

### **Determination of income where not reasonably possible to assess over assessment period**

7. Where it is not reasonably possible to ascertain the relevant person's income (in a case to which regulation 8 does not apply), over the relevant assessment period, the local authority may determine an amount based on—

- (a) income calculated in accordance with Chapters IV, V and VI of this Part by reference to income in any complete year within the three year period immediately preceding the date of application; or
- (b) actual income for any shorter period of time within the relevant assessment period and multiplied by an appropriate factor to produce an equivalent amount for a 52 week period,

and the amount so determined shall be treated as the relevant person's income for the purpose of these Regulations.

### **Determination where a relevant person declines to provide income details**

8. Where in relation to any application a relevant person declines to provide details of income or provides insufficient details to enable total applicable income to be assessed, the applicant's contribution in that case shall be deemed to be the full amount of approved expense.

### **Cases where income is disregarded**

9. Any income of a relevant person shall be disregarded, if at the date of an application that person is in receipt of—

- (a) income support;
- (b) income based jobseeker's allowance; or
- (c) guarantee credit.

## CHAPTER IV:

### EMPLOYED EARNERS

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

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

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

- (ii) expenses incurred by the relevant person under arrangements made for the care of a member of that relevant person's family owing to the relevant person's absence from home;
  - (g) any award of compensation made under section 112(1) and (4) or 117(3)(a) of the Employment Rights Act 1996<sup>(21)</sup> (remedies and compensation for unfair dismissal);
  - (h) any such sum as is referred to in section 112(3) of the 1992 Act (certain sums to be earnings for social security purposes);
  - (i) any statutory sick pay under Part XI of the 1992 Act or statutory maternity pay under Part XII of that Act, or a corresponding payment under any enactment having effect in Northern Ireland;
  - (j) any remuneration paid by or on behalf of an employer to the relevant person who for the time being is on maternity leave or is absent from work because that relevant person is ill.
- (2) Earnings shall not include—
- (a) any payment in kind;
  - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of employment;
  - (c) any occupational pension.

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

**11.** The net earnings of a relevant person derived from employment as an employed earner shall, for the purposes of regulation 6, be determined by taking into account the earnings of the relevant person from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax; and
  - (ii) primary Class 1 contributions under Part I of the 1992 Act;
- (b) one-half of any sum paid by the relevant person by way of a contribution towards an occupational pension scheme; and
- (c) one-half of any sum payable as a contribution towards a personal pension scheme paid by the relevant person.

## **CHAPTER V:**

### **SELF-EMPLOYED EARNERS**

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

**12.** “Earnings” means, in the case of employment as a self employed earner, the gross income of that employment and includes any allowance paid under section 2 of the Employment and Training Act 1973<sup>(22)</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(23)</sup> to the relevant person for the purposes of assisting that person in carrying on that business.

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(21) 1996 c. 18.

(22) 1973 c. 50; section 2 was substituted by the Employment Act 1988 (c. 19), section 25, and repealed in part by the Employment Act 1989 (c. 38), section 29 and Schedule 7. Section 2(3A) was inserted in relation to Scotland only by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 47.

(23) 1990 c. 35; section 2 was amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 51 and Schedule 10.



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

**13.**—(1) The net earnings of a relevant person derived from profit as a self employed earner shall, for the purposes of regulation 6, be determined in accordance with the following paragraphs (2) to (10).

(2) 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.

(3) 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 1975<sup>(24)</sup>, his share of the net profit derived from that employment, less an amount in respect of income tax and of social security contributions payable under the 1992 Act determined in accordance with regulation 14.

(4) For the purposes of paragraph (2) the net profit of the employment shall, except where paragraph (9) applies, be determined by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (6) to (8), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax; and
  - (ii) social security contributions payable under the 1992 Act, determined in accordance with regulation 14; and
- (c) one-half of any sum payable in respect of a retirement annuity contract or a personal pension scheme paid by the relevant person.

(5) For the purposes of paragraph (2) the net profit of the employment shall be determined by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (6) to (8), any expenses wholly and exclusively incurred in that period for the purposes of that employment.

(6) Subject to paragraph (7), no deduction shall be made under paragraph (4)(a) or (5), in respect of—

- (a) any capital expenditure;
- (b) any depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the assessment period;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment; and
- (g) any debts, except bad debts proved to be such, but this sub paragraph shall not apply to any expenses incurred in the recovery of a debt.

(7) A deduction shall be made under paragraph (4)(a) or (5) in respect of

- (a) the repayment of capital on any loan used for—
  - (i) the replacement in the course of business of equipment or machinery; and
  - (ii) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;

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(24) S.I. 1975/529.

- (b) the excess of any value added tax paid by the relevant person in respect of taxable supplies made to that relevant person, over any such tax received by that relevant person in respect of taxable supplies made by that relevant person, calculated with reference to the assessment period;
  - (c) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair; and
  - (d) any payment of interest on a loan taken out for the purposes of the employment.
- (8) No deduction shall be made in respect of any expenses under paragraph (4)(a) or (5) where, given the nature and the amount of the expense, it has been unreasonably incurred.
- (9) Where a relevant person is engaged in employment as a child minder the net profit of the employment shall be determined by taking into account one third of the earnings of that employment over the assessment period, less—
- (a) an amount in respect of—
    - (i) income tax; and
    - (ii) social security contributions payable under the 1992 Act, determined in accordance with regulation 14; and
  - (b) one-half of any sum payable as a contribution in respect of a retirement annuity contract or a personal pension scheme paid by the relevant person.
- (10) For the avoidance of doubt, where a relevant person is engaged in employment as a self employed earner and that relevant person is also engaged in one or more other employments as a self employed earner or employed earner any loss incurred in any one of that relevant person's employments shall not be offset against earnings in any other of that relevant person's employments.

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

14.—(1) The amount to be deducted in respect of income tax under regulation 13(3), (4) or (9) shall be determined on the basis of the amount of chargeable income and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate or the basic rate and higher rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988(25) as is appropriate to that relevant person's circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate and, if appropriate, the basic rate and the higher rate of tax is to be applied and the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis.

- (2) The amount to be deducted in respect of social security contributions under regulation 13(3), (4) or (9) shall be the total of—
- (a) the amount of Class 2 contributions payable under subsection (1) or, as the case may be, subsection (3) of section 11 of the 1992 Act at the rate applicable at the date of the application except where the relevant person's chargeable income is less than the amount for the time being specified in subsection (4) of that section for the tax year in which the date of the application falls; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and
  - (b) the amount of Class 4 contributions, if any, which would be payable under section 15 of that Act as the percentage rate applicable at the date of the application on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of the application falls; but if the assessment period is less than a year, those limits shall be reduced pro rata.

- (3) In this regulation “chargeable income” means—
- (a) except where sub paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (4)(a) or, as the case may be, (5) of regulation 13;
  - (b) in the case of employment as a child minder, one third of the earnings of that employment.

#### CHAPTER VI:

#### OTHER INCOME

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

**15.** Income other than earnings shall, for the purpose of regulation 6, be determined in accordance with this Chapter.

#### **Sums to be disregarded in the determination of other income**

**16.—(1)** The income of a relevant person shall include income under this Chapter but any amount paid by way of tax on income shall be disregarded.

(2) There shall be disregarded from the determination of a relevant person’s income under this Chapter any sum, where applicable, specified in Schedule 2.

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

#### **Notional income and joint income and capital**

**17.—(1)** A relevant person shall be treated as possessing income as determined in accordance with Chapters III, IV, V and this Chapter of which that relevant person has deprived himself for the purpose of increasing the amount of grant.

(2) A relevant person shall be treated as possessing income as determined in accordance with Chapters III, IV, V and this Chapter which that relevant person could reasonably have expected to receive during the period of assessment but which that relevant person has not received.

(3) Where a relevant person and one or more persons are entitled to benefit from any income under this Chapter they should be treated for the purpose of determining income as if each of them were entitled to an equal share of the payment.

#### **Determination of income from capital and investments**

**18.—(1)** Any investment income from capital and investments shall, for the purposes of regulation 6 and this regulation, be taken into account as income of a relevant person and includes income from—

- (a) capital or investments derived from any source;
- (b) all interest payments from the date they are credited to the relevant person, including interest which is reinvested.

(2) Any investment income from capital and investments shall, for the purposes of regulation 6 and this regulation, exclude—

- (a) any payments from the MacFarlane Trusts, the Independent Living Funds or the Fund;
- (b) any payment from any other charitable body.

### **Determination of income from pensions**

19. Any income from pensions other than retirement pension shall, for the purposes of regulation 6 and this regulation, be taken into account as income of a relevant person and includes income from—

- (a) any additional pension under section 45 of the 1992 Act;
- (b) an occupational pension;
- (c) a personal pension scheme; and
- (d) a retirement annuity contract.

### **Determination of housing benefit as income**

20. Where a relevant person is in receipt of housing benefit, that benefit shall, for the purposes of regulation 6 and this regulation, be taken into account as income of the relevant person.

### **Determination of certain capital payments and receipts as income**

21.—(1) Subject to paragraph (2), all capital payments received by a relevant person in the 3 years immediately preceding the date of application shall, for the purposes of regulation 6 and this regulation, be determined as income in the assessment period to the extent that they consist of any payment made for the purpose of enabling the works to which the application relates to be carried out.

(2) Paragraph (1) does not apply in respect of any capital payments which are repayable by that relevant person.

### **Determination of income from rent**

22.—(1) Any rental income of a relevant person shall, for the purposes of regulation 6, be taken into account as income of that relevant person.

(2) Such income shall be assessed as income of a relevant person whether or not the property in respect of which the rental income is received is the same property to which the application relates.

### **Determination of other payments as income**

23. Any periodic payments to a relevant person shall, for the purpose of regulation 6 and this regulation, be taken into account as income of that relevant person where a payment consists of—

- (a) any payment made for the maintenance of a relevant person or a person for whom a relevant person is responsible in terms of regulation 27 by a spouse, former spouse or any other person;
- (b) any payment of income, other than a payment of income made under any of the MacFarlane Trusts, the Independent Living Funds or the Fund, made—
  - (i) to a third party in respect of a relevant person shall be treated as possessed by the relevant person to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of the relevant person or the relevant person's family;
  - (ii) to a relevant person or a member of the relevant person's family in respect of a third party, shall be treated as possessed by the relevant person to the extent that it is kept or used by the relevant person or used on behalf of the relevant person's family;
- (c) any payment received under an annuity other than a retirement annuity contract;
- (d) any payment payable under a private health or critical illness policy of insurance for future disability.

## CHAPTER VII: ALLOWABLE DEDUCTIONS

### **Determination of allowable deductions**

**24.** Allowable deductions for the purposes of regulation 4(2) shall be determined in accordance with this Chapter.

### **Allowable deductions for mortgage or rent**

**25.—(1)** Subject to paragraph (3) rental payments made by the relevant person for the purpose of allowing—

- (a) the relevant person; or
- (b) any member of the relevant person’s family,

to occupy any property as that person’s or, as the case may be, that member’s main or only residence shall be allowable deductions.

(2) For the purposes of paragraph (1) rental payment excludes any payment in relation to council tax or water charges but includes any payment in relation to any standard security over the property granted—

- (a) in respect of acquiring the property;
- (b) in respect of carrying out repairs or improvements to the property;
- (c) where another standard security over the property has been redeemed and the payment would have, had it been made under the redeemed security, qualified as rental payment under paragraphs (a) or (b).

(3) For the purposes of the case referred to in paragraph (1)(b), the payment is a rental payment only where the relevant person is contractually obliged to make that payment.

### **Allowable deductions for dependent persons and disabled people**

**26.—(1)** The allowances specified in this regulation shall be allowable deductions and are as follows—

- (a) (i) subject to paragraph (2), an allowance of £47 for each week of the assessment period where a relevant person is responsible for another person in terms of regulation 27; and
- (ii) subject to paragraph (2), where that other person is in receipt of a disability living allowance or is registered blind, an additional allowance of £42 for each week of the assessment period;
- (b) where a relevant person has no spouse, an allowance of £35 for each week of the assessment period where that relevant person is in receipt of—
  - (i) disability living allowance;
  - (ii) the disability element of the working tax credit;
  - (iii) disabled person’s tax credit;
  - (iv) severe disablement allowance;
  - (v) incapacity benefit;
  - (vi) mobility supplement;
  - (vii) attendance allowance; or

- (viii) any equivalent benefit paid to meet attendance, or mobility needs due to disability or illness;
- (c) where a relevant person has no spouse, an allowance of £35 for each week of the assessment period where that relevant person is not in receipt of any benefits specified in paragraph (1)(b) but that relevant person—
  - (i) is registered as blind; or
  - (ii) was previously in receipt of a benefit under paragraph (1)(b) but has ceased to receive that benefit due to the maximum age limit for that benefit being reached or because that person is being treated as an inpatient;
- (d) where paragraph (1)(e) does not apply, where a relevant person has a spouse but would otherwise qualify for an allowance under paragraphs (1)(b) or (c), an allowance of £50 for each week of the assessment period;
- (e) in a case where the spouse of the relevant person as described in paragraph (1)(d) is also in receipt of any of the benefits mentioned in paragraph (1)(b) or falls within the categories specified in paragraph (1)(c)(i) or (ii) an allowance of £25 for each week of the assessment period.

(2) Where more than one relevant person is responsible for another person in terms of regulation 27 then the allowances provided for at paragraph (1)(a)(i) or (ii) shall be applied only once in respect of each such other person for whom those relevant persons are responsible.

#### **Circumstances where a person is to be treated as responsible for another person**

**27.**—(1) Subject to the following provisions of this regulation a person shall be treated as responsible for another person who is normally living with that person who is—

- (a) below the age of sixteen; or
  - (b) aged sixteen or above but below the age of 21 and in a full time course of education; or
  - (c) aged 21 if aged 20 at the beginning of the academic year of the full time course of education in which the person is engaged.
- (2) A person shall be treated for the purposes of paragraph (1) as normally living with—
- (a) the person who is receiving child benefit in respect of that person;
  - (b) if there is no such person and where only one claim for child benefit has been made in respect of that person, the person who made that claim;
  - (c) the person whose means could have been taken into account for the purposes of determining a student loan in respect of that person provided under the Education (Student Loans) (Scotland) Regulations 1999(26); or
  - (d) in any other case the person who has the primary responsibility for that person.

(3) In this regulation “full-time course of education” means a course of education requiring attendance for 24 weeks or more during any period of one year—

- (a) provided by an institution within the higher education sector; or
- (b) provided by
  - (i) a school; or
  - (ii) a college of further education,

involving more than 16 hours per week of programmed learning, which may consist of any combination of—

- (aa) classroom-based learning;
- (bb) workshop-based learning; or
- (cc) use of structured learning packages supported by teaching staff.

## PART III

### ASSESSMENT OF CONTRIBUTIONS – NON-OCCUPIERS AND OTHER PREMISES

#### Interpretation

**28.** In this Part of these Regulations–

“actual value” means the value of the house on the date of the application;

“added value” means, subject to regulation 31, the difference between the actual value of the house and the assumed value of the house;

“assumed value” means the value of the house determined on the assumption that the works have already been satisfactorily carried out at the date of the application;

“house” in relation to an application referred to in regulation 29(b), has the meaning assigned by section 108(8) of the Act;

“refurbishment scheme” means a scheme where a single contract is to be let to undertake a similar programme of improvement or repair works to 3 or more houses and the works are not works to which regulation 33(d) applies or repair work carried out by a local authority under section 108(3) of the Act;

“value” in relation to actual value and assumed value, shall be determined by reference to the price which could be expected to be obtained for the house were it to be available for sale on the open market with vacant possession.

#### Applications to which Part III applies

**29.** The classes of application to which this Part applies are–

- (a) an application by the owner where the owner, or any member of the owner’s family, does not occupy or intend to occupy the house as that person’s main or only residence; or
- (b) an application which relates to other premises (within the meaning of section 108(8)(b) of the Act) other than a house and which relates to a repairs notice that has been served in terms of that section.

#### Determination of added value

**30.** The added value shall be determined by a qualified valuer nominated by the local authority by which the application is received.

#### Circumstances where added value deemed to be nil

**31.** The added value shall be deemed to be nil where the applicant is–

- (a) a registered social landlord in terms of section 57 of the Housing (Scotland) Act 2001(27);
- or

- (b) any charitable body or other body that does not trade for profit and is established for the purpose of, or has among its objects and powers—
- (i) the provision, construction, improvement or management of houses to be kept available for letting;
  - (ii) the provision, construction, improvement or management of houses for occupation by members of the body, where the rules of the body restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by the body;
  - (iii) acquiring, or repairing and improving, or creating by the conversion of houses or other property, houses to be disposed of on sale, on lease or on shared ownership terms; or
  - (iv) constructing houses to be disposed of on shared ownership terms.

### **Calculation of applicant's contribution**

**32.** Subject to regulation 33, an applicant's contribution shall be the added value plus 80% of the amount by which the approved expense exceeds the added value.

### **Reduction of applicant's contribution**

**33.—(1)** Subject to regulation 34, the applicant's contribution shall be reduced by 20% of the amount by which the approved expense exceeds the added value for each qualifying condition which applies.

- (2) The qualifying conditions are—
- (a) that the works to which the application relates are required—
    - (i) for the provision of housing by the conversion or subdivision of the house or houses; or
    - (ii) to facilitate the re-occupation of the house or houses which have been vacant for no less than 2 years prior to the date of application;
  - (b) that the works to the house to which the application relates will bring the house up to the tolerable standard in terms of section 86 of the Act;
  - (c) that the works to which the application relates are part of a refurbishment scheme;
  - (d) that the works to which the application relates are to make improvements or carry out repairs in respect of a building which comprises either two or more separate houses, or a house or houses and other separate premises where—
    - (i) the works will benefit either two or more such houses, or house or houses and other separate premises; and
    - (ii) the cost of the improvements or repairs will be shared among the owners or occupiers of those houses or other separate premises;
  - (e) that the works to which the application relates shall—
    - (i) increase substantially the extent to which any disabled person can independently enter and move around the house and operate all fittings, services and controls; and
    - (ii) exceed the requirements of the Building Standards (Scotland) Regulations 1990<sup>(28)</sup> in this respect;
  - (f) that the applicant is—

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(28) S.I. 1990/2179.



- (i) a registered social landlord in terms of section 57 of the Housing (Scotland) Act 2001; or
- (ii) any charitable body or other body that does not trade for profit and is established for the purpose of, or has among its objects and powers—
  - (aa) the provision, construction, improvement or management of houses to be kept available for letting;
  - (bb) the provision, construction, improvement or management of houses for occupation by members of the body, where the rules of the body restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by the body;
  - (cc) acquiring, or repairing and improving, or creating by the conversion of houses or other property, houses to be disposed of on sale, on lease or on shared ownership terms; or
  - (dd) constructing houses to be disposed of on shared ownership terms.

**Applicant's contribution not to be less than added value**

**34.** In no circumstances shall the applicant's contribution be less than the added value.

**PART IV**

**ASSESSMENT OF CONTRIBUTION— OTHERS**

**Assessment of contributions where application falls outwith Part II and Part III**

**35.** In the case of any application to which neither Part II nor Part III applies, the amount to be treated as the applicant's contribution shall be assessed as an amount equal to the approved expense.

**PART V**

**APPLICATION**

**Application of Regulations**

**36.** These Regulations shall not have effect in relation to applications for grant approved before these Regulations came into force.

St Andrew's House,  
Edinburgh  
29th September 2003

*MARY MULLIGAN*  
Authorised to sign on behalf of the Scottish  
Executive

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

## SCHEDULE 1

Regulation 4

## ASSESSMENT OF APPLICANT'S CONTRIBUTIONS

<i>Column 1</i>		<i>Column 2</i>
<i>Range of income</i>		<i>Percentage figure</i>
<i>From</i>	<i>To</i>	
£0	£9.99	0
£10	£242.99	1
£243	£475.99	2
£476	£708.99	3
£709	£941.99	4
£942	£1,174.99	5
£1,175	£1,407.99	6
£1,408	£1,640.99	7
£1,641	£1,873.99	8
£1,874	£2,106.99	9
£2,107	£2,339.99	10
£2,340	£2,572.99	11
£2,573	£2,805.99	12
£2,806	£3,038.99	13
£3,039	£3,271.99	14
£3,272	£3,504.99	15
£3,505	£3,737.99	16
£3,738	£3,970.99	17
£3,971	£4,203.99	18
£4,204	£4,436.99	19
£4,437	£4,669.99	20
£4,670	£4,902.99	21
£4,903	£5,135.99	22
£5,136	£5,368.99	23
£5,369	£5,601.99	24
£5,602	£5,834.99	25
£5,835	£6,067.99	26
£6,068	£6,300.99	27
£6,301	£6,533.99	28
£6,534	£6,766.99	29

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

<i>Column 1</i>		<i>Column 2</i>
<i>Range of income</i>		<i>Percentage figure</i>
<i>From</i>	<i>To</i>	
£6,767	£6,999.99	30
£7,000	£7,299.99	31
£7,300	£7,599.99	32
£7,600	£7,899.99	33
£7,900	£8,199.99	34
£8,200	£8,499.99	35
£8,500	£8,799.99	36
£8,800	£9,099.99	37
£9,100	£9,399.99	38
£9,400	£9,699.99	39
£9,700	£9,999.99	40
£10,000	£10,299.99	41
£10,300	£10,599.99	42
£10,600	£10,899.99	43
£10,900	£11,199.99	44
£11,200	£11,499.99	45
£11,500	£11,799.99	46
£11,800	£12,099.99	47
£12,100	£12,399.99	48
£12,400	£12,699.99	49
£12,700	£12,999.99	50
£13,000	£13,299.99	51
£13,300	£13,599.99	52
£13,600	£13,899.99	53
£13,900	£14,199.99	54
£14,200	£14,499.99	55
£14,500	£14,799.99	56
£14,800	£15,099.99	57
£15,100	£15,399.99	58
£15,400	£15,699.99	59
£15,700	£15,999.99	60
£16,000	£16,299.99	61
£16,300	£16,599.99	62

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<i>Column 1</i>		<i>Column 2</i>
<i>Range of income</i>		<i>Percentage figure</i>
<i>From</i>	<i>To</i>	
£16,600	£16,899.99	63
£16,900	£17,199.99	64
£17,200	£17,499.99	65
£17,500	£17,799.99	66
£17,800	£18,099.99	67
£18,100	£18,399.99	68
£18,400	£18,699.99	69
£18,700	£18,999.99	70
£19,000	£19,499.99	71
£19,500	£19,999.99	72
£20,000	£20,499.99	73
£20,500	£20,999.99	74
£21,000	£21,499.99	75
£21,500	£21,999.99	76
£22,000	£22,499.99	77
£22,500	£22,999.99	78
£23,000	£23,499.99	79
£23,500	£23,999.99	80
£24,000	£24,799.99	81
£24,800	£25,599.99	82
£25,600	£26,399.99	83
£26,400	£27,199.99	84
£27,200	£27,999.99	85
£28,000	£28,799.99	86
£28,800	£29,599.99	87
£29,600	£30,399.99	88
£30,400	£31,199.99	89
£31,200	£31,999.99	90
£32,000	upwards	100

## SCHEDULE 2

Regulation 16(2)

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

1. Any payment in respect of any expenses incurred by a relevant person who is—
  - (a) engaged by a charitable body or voluntary organisation; or
  - (b) a volunteer

if he otherwise derives no remuneration or profit from the employment.

2. 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.

3. Any payment under section 148 of the 1992 Act (Entitlement of pensioners to Christmas bonus).

4. Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944(29) or in accordance with arrangements made under section 2 of the Employment and Training Act 1973(30) to assist disabled persons to obtain or retain employment despite their disability.

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

6. Any payment under the following—

- (a) Naval, Military and Air Forces Etc. (Disablement and Death) Services Pensions Order 1983(31);
- (b) Personal Injuries (Civilians) Scheme 1983(32);
- (c) Pensions (Polish Forces) Scheme 1964(33); and
- (d) War Pensions (Mercantile Marine) Scheme 1964(34).

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide a means of assessment of an applicant's contribution to the cost of works for which improvement grants, repairs grants and grants for a means of escape from fire for a house in multiple occupation may be given by a local authority. The Regulations are made under section 240A of the Housing (Scotland) Act 1987.

Part I of the Regulations deals with commencement and interpretation.

Part II of the Regulations sets out the means test in relation to applications for grant from owner occupiers, tenants, liferenters, disabled persons or the person responsible for a disabled person under

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(29) 1944 c. 10.

(30) 1973 c. 50.

(31) S.I. 1983/883.

(32) S.I. 1983/686.

(33) S.I. 1964/2007.

(34) S.I. 1964/2058.

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the age of 16. In the last 2 cases the works must be to make the property suitable for the needs of the disabled occupant. Chapter I details the applications to which Part II applies. Chapter II sets out the formula for calculating the applicant's contribution and details who are the relevant persons whose income will be taken into account when calculating the applicant's contribution. Schedule 1 contains a table enabling the actual calculation of the applicant's contribution. Chapter III deals with general provisions in relation to how the income of relevant persons is assessed with detailed provisions being provided in Chapter IV in relation to employed earners, Chapter V in relation to self employed earners and Chapter VI in relation to other income. Schedule 2 details certain sums that are to be disregarded when determining income. Finally, Chapter VII details what constitute allowable deductions against income.

Part III of the Regulations sets out the method of calculation of the applicant's contribution in relation to applications for grant from owners who are not in occupation of the house to which the application relates or where the application is for repairs grant as a result of a repairs notice over premises other than a house where those premises are part of a building which contains housing.

Part IV of the Regulations states that where an application for grant falls into neither Part II nor Part III of the Regulations, the applicant's contribution shall be the whole of the amount approved by the local authority, being the expense of the carrying out of the works.

Part V of the Regulations provides that the Regulations shall not apply in respect of applications approved by a local authority before the 1st October 2003 (the date on which these Regulations come into force).