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STATUTORY INSTRUMENTS

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**1991 No. 2887**

**The Disability Working Allowance (General) Regulations 1991**

**PART V**

**INCOME AND CAPITAL**

*CHAPTER V*

*OTHER INCOME*

**Calculation of income other than earnings**

**27.**—(1) For the purposes of regulation 18 (normal weekly 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 (5), be his gross income and any capital treated as income under regulation 28 (capital treated as income).

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

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

(4) Any payment to which regulation 21(2) applies (payments not earnings) shall be taken into account as income for the purposes of paragraph (1).

(5) Where a loan is made to a person pursuant to arrangements made under section 1 of the Education (Student Loans) Act 1990<sup>(2)</sup>, or article 3 of the Education (Student Loans) (Northern Ireland) Order 1990<sup>(3)</sup> and that person ceases to be a student before the end of the academic year in respect of which the loan is payable, or, as the case may be, before the end of his course, a sum equal to the weekly amount apportionable under paragraph (2) of regulation 47 shall be taken into account under paragraph (1) for each week, in the period over which the loan fell to be apportioned, following the date on which that person ceases to be a student; but in determining the weekly amount apportionable under paragraph (2) of regulation 47 (treatment of student loans) so much of that paragraph as provides for a disregard shall not have effect.

**Capital treated as income**

**28.**—(1) Any capital payable by instalments which are outstanding at the date of the claim shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI of this Part exceeds £16,000, be treated as income.

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

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<sup>(1)</sup> The benefit Acts are specified in section 84(1) of the Social Security Act 1986 (c. 50).

<sup>(2)</sup> 1990 c. 6.

<sup>(3)</sup> S.I. 1990/1506 (N.I.).

**Notional income**

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

(2) 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 would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by the claimant.

(3) Any payment of income, other than a payment of income made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust or the Independent Living Fund, made—

- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall be treated as possessed by that member of the family to the extent that it is used for his food, ordinary clothing or footwear, household fuel, or housing costs or is used for any personal community charge or collective community charge contribution for which that member is liable; and in this sub-paragraph the expression "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;
  - (b) to a member of the family in respect of a single claimant or a third party (but not in respect of another member of that family) shall be treated as possessed by that member to the extent that it is kept by him or used by or on behalf of any member of the family.
- (4) 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 adjudication officer shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies him that the means of that person are insufficient for him to pay or 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 adjudication officer is satisfied that it is reasonable for him to provide his services free of charge.

(5) Where a claimant is treated as possessing any income under any of paragraphs (1) to (3), the foregoing provisions of this Part shall apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(6) Where a claimant is treated as possessing any earnings under paragraph (4), the foregoing provisions of this Part shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess, except that paragraph (3) of regulation 22 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account those earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259 of the Income and Corporation Taxes Act 1988 (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
- (b) an amount in respect of primary Class 1 contributions under the Social Security Act equivalent to an amount calculated by applying to those earnings the appropriate primary percentage applicable at the date of claim; and

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

### **Modifications in respect of children and young persons**

**30.**—(1) Any capital of a child or young person payable by instalments which are outstanding at the date of claim shall, if the aggregate of the instalments outstanding and the amount of that child's or young person's other capital calculated in accordance with Chapter VI of this Part in like manner as for the claimant, except where otherwise provided, would exceed £3,000, be treated as income.

(2) Where the income of a child or young person, other than income consisting of any payment of maintenance whether under a court order or not, calculated in accordance with the foregoing provisions of this Part exceeds the sum specified as an allowance for that child or young person in Schedule 5 and regulation 51(5) (sum for child or young person who has income in excess to be nil) applies, that income shall not be treated as income of the claimant.

(3) Where the capital of a child or young person, if calculated in accordance with Chapter VI of this Part in like manner as for the claimant, except where otherwise provided, would exceed £3,000, any income of that child or young person shall not be treated as income of the claimant.

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