

*This Statutory Instrument has been amended by S.I. 1993/964 and is being free of charge to all known recipients of S.I. 1992/2977.*

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## STATUTORY INSTRUMENTS

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**1992 No. 2977**

# NATIONAL ASSISTANCE SERVICES

## The National Assistance (Assessment of Resources) Regulations 1992

<i>Made</i>	- - - -	<i>30th November 1992</i>
<i>Laid before Parliament</i>		<i>4th December 1992</i>
<i>Coming into force</i>	- -	<i>1st April 1993</i>

In exercise of the powers conferred by section 22(5) of the National Assistance Act 1948<sup>(1)</sup> and of all other powers enabling me in that behalf, I hereby make the following Regulations:—

### PART I GENERAL

#### **Citation and Commencement**

1. These Regulations may be cited as the National Assistance (Assessment of Resources) Regulations 1992 and shall come into force on 1st April 1993.

#### **Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the National Assistance Act 1948;

“attendance allowance” has the same meaning as in the Income Support Regulations;

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(1) 1948 c. 29; section 22(5) was amended by section 39(1) of and paragraph 6 of Schedule 6 to the Ministry of Social Security Act 1966 (c. 20), by section 35(2) of and paragraph 3(b) of Schedule 7 to the Supplementary Benefits Act 1976 (c. 71), by section 20 of and paragraph 2 of Schedule 4 to the Social Security Act 1980, and by section 86 of and paragraph 32 of Schedule 10 to the Social Security Act 1986 (c. 50). As respects Scotland, section 22(5) of the 1948 Act is applied by section 87(3) of the Social Work (Scotland) Act 1968 (c. 49), as amended by paragraph 10(13) of Schedule 9 to the National Health Service and Community Care Act 1990 (c. 19), in respect of accommodation provided under either the 1968 Act or section 7 of the Mental Health (Scotland) Act 1984 (c. 36).

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

“council tax” shall be construed in accordance with section 1(1) of the Local Government Finance Act 1992**(3)**;

“council tax benefit” means council tax benefit under the Contributions and Benefits Act**(4)**;

“couple” has the same meaning as in the Income Support Regulations;

“disability living allowance” means a disability living allowance under the Contributions and Benefits Act**(5)**;

“disability working allowance” means a disability working allowance under the Contributions and Benefits Act**(6)**;

“dwelling” has the meaning prescribed in section 137(1) of the Contributions and Benefits Act;

“employed earner” shall be construed in accordance with section 2(1)(a) of the Contributions and Benefits Act;

“the Fund” has the same meaning as in the Income Support Regulations**(7)**;

“income support” means income support under the Contributions and Benefits Act**(8)**;

“the Income Support Regulations” means the Income Support (General) Regulations 1987**(9)**;

“the Independent Living Fund” has the same meaning as in the Income Support Regulations**(10)**;

“invalidity pension” means an invalidity pension under the Contributions and Benefits Act**(11)**;

“less dependent resident” means a resident—

- (a) in premises which are neither owned nor managed by a local authority**(12)** and which are not registered (as respects England and Wales) under the Registered Homes Act 1984**(13)** or (as respects Scotland) under Part IV of the Social Work (Scotland) Act 1968**(14)**; or
- (b) in premises which are either owned or managed or owned and managed by a local authority but at which residents are not provided with board,

and in this context “board” means at least some cooked or prepared meals which are both cooked or prepared, by a person other than the resident or a member of his family, and consumed at those premises or in associated premises, if the cost of those meals is accounted for as part of the standard rate for the accommodation at those premises;

“liable relative” means a spouse or former spouse of a resident;

“the Macfarlane (Special Payments) Trust”, “the Macfarlane (Special Payments) (No.2) Trust” and “the Macfarlane Trust” have the same meaning as in the Income Support Regulations**(15)**;

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**(2)** 1992 c. 4.

**(3)** 1992 c. 14.

**(4)** See sections 131 to 133 of that Act, as amended by section 103 of and paragraphs 4 to 6 of Schedule 9 to the Local Government Finance Act 1992.

**(5)** See sections 71 to 76 of that Act.

**(6)** See section 129 of that Act.

**(7)** As amended by regulation 6(2)(b) of S.I. 1992/1101.

**(8)** See sections 124 to 127 of that Act.

**(9)** S.I. 1987/1967, as amended.

**(10)** As amended by regulation 4 of S.I. 1988/999.

**(11)** See section 33 of that Act.

**(12)** See section 33(1) of the Act, as amended by section 195(6) of, and paragraph 2(6) of Schedule 23 to, the Local Government Act 1972 (c. 70), section 214 of, and paragraph 89 of Schedule 27 to, the Local Government (Scotland) Act 1973 (c. 65), and section 11(5) of and Schedule 2 to the Residential Homes Act 1980 (c. 7).

**(13)** 1984 c. 23.

**(14)** 1968 c. 49.

**(15)** As amended by regulation 2(1) of S.I. 1988/663, regulation 3(2) of S.I. 1991/127 and regulation 5(2) of S.I. 1991/1175.

- “mobility supplement” has the same meaning as in the Income Support Regulations;
- “partner” has the same meaning as in the Income Support Regulations;
- “resident” means a person provided with accommodation under Part III of the Act(16);
- “self-employed earner” shall be construed in accordance with section 2(1)(b) of the Contributions and Benefits Act;
- “severe disablement allowance” means a severe disablement allowance under the Contributions and Benefits Act(17);
- “sickness benefit” means sickness benefit under the Contributions and Benefits Act((18);
- “standard rate” means a standard rate fixed in accordance with section 22(2) of the Act(19);
- “student” has the meaning prescribed in regulation 61 of the Income Support Regulations(20) (interpretation);
- “temporary resident” means a resident whose stay is—
- (a) unlikely to exceed 52 weeks, or
  - (b) in exceptional circumstances, unlikely substantially to exceed that period.

(2) Where reference is made in these Regulations to the application of a provision in the Income Support Regulations, any reference to “claimant” in the provision of the Income Support Regulations so applied shall be construed as a reference to a resident.

- (3) In these Regulations, unless the context otherwise requires, a reference—
- (a) to a numbered Part is to the Part of these Regulations bearing that number;
  - (b) to a numbered regulation or Schedule is to the regulation in or Schedule to these Regulations bearing that number;
  - (c) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;
  - (d) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

### **Assessing a resident’s ability to pay**

**3.** For the purposes of section 22(3) of the Act(21) the regulations to which a local authority shall give effect in assessing a resident’s ability to pay are those set out in these Regulations.

### **Rounding of fractions**

**4.** Where any calculation under these Regulations of a resident’s ability to pay results in a fraction of a penny, that fraction shall, if it would be to the resident’s advantage, be treated as a penny, otherwise it shall be disregarded.

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(16) As respects Scotland, *see* section 65(f) of the Act, as amended by paragraph 5(9) of Schedule 9 to the National Health Service and Community Care Act 1990, and section 87(3) of the Social Work (Scotland) Act 1968.

(17) *See* sections 68 and 69 of that Act.

(18) *See* sections 31 and 32 of that Act.

(19) As respects England and Wales, *see also* section 26(3) of the Act; as respects Scotland, *see also* section 87(4) of the Social Work (Scotland) Act 1968.

(20) As amended by regulation 10(c) of S.I. 1991/1559, and regulation 5(1) of S.I. 1992/468.

(21) Amended by section 31(1) of, and paragraph 3 of Schedule 7 to, the Supplementary Benefits Act 1976, and section 86 of, and paragraph 32 of Schedule 10 to, the Social Security Act 1986. *See also* section 87(3) of the Social Work (Scotland) Act 1968.

### **Payment by less dependent residents**

5. In assessing a less dependent resident's ability to pay for his accommodation, a local authority need not apply Parts II to V of these Regulations (treatment of income, treatment of capital, liable relatives and students) if they consider it reasonable in the circumstances not to do so.

### **Liable relatives**

6. Regulations 10 to 19 (income, except calculation of income), 21 to 27 (capital, except capital limit and tariff income) and Part V (students) shall not apply to any payment which is to be calculated in accordance with Part IV (liable relatives).

### **Students**

7. The provisions of Parts II and III (income and capital) shall have effect in relation to students subject to the modifications set out in Part V (students).

### **Transitional provisions**

8. The transitional provisions set out in Schedule 1 shall have effect.

## **PART II**

### **TREATMENT OF INCOME**

#### **Calculation of income**

9.—(1) A resident's income shall be calculated on a weekly basis—

- (a) by determining in accordance with this Part the weekly amount of his income; and
- (b) by adding to that amount his weekly tariff income from capital calculated in accordance with regulation 28 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1), "income" includes capital treated as income and notional income under regulations 16 and 17.

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

10. A resident's gross earnings derived from employment as a self-employed earner shall be assessed in accordance with the definition of "earnings" in regulation 37 of the Income Support Regulations(22) (earnings of self-employed earners).

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

11.—(1) For the purposes of regulation 12, the earnings of a resident derived from employment as a self-employed earner to be taken into account shall, subject to paragraph (3), be his net profit from that employment.

(2) For the purposes of paragraph (1), a resident's net profit shall be calculated by taking into account his gross earnings from his employment as a self-employed earner less any relevant outgoings, liabilities or expenses.

(3) There shall be disregarded from the calculation of a resident's net profit any sum, where applicable, specified in Schedule 2.

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(22) Amended by regulation 12 of S.I. 1989/1323, and article 2 of and the Schedule to S.I. 1991/387.

### **Weekly amount of net profit of self-employed earners**

12.—(1) Subject to paragraphs (2) and (3), the weekly amount of a resident's income from employment as a self-employed earner shall be determined by reference to his average weekly net profit from that employment—

- (a) over a period of 52 weeks; or
- (b) where the resident has recently become engaged in that employment or where there has been a change which is likely to affect the normal pattern of business, over such other period of weeks as may, in any particular case, enable the weekly amount of his earnings to be determined more accurately.

(2) Subject to paragraph (3), where a resident's earnings consist of or include royalties or sums paid periodically for or in respect of any copyright, those earnings ("the royalties etc.") shall be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of the royalties etc.—

- (a) unless sub-paragraph (b) applies, by the difference between the standard rate for the accommodation provided for that resident and the lower rate for that accommodation which he would be liable to pay if he did not have the royalties etc.;
- (b) where a resident would be assessed as liable to make no contribution towards the cost of his accommodation if he did not have the royalties etc., by the standard rate for his accommodation.

(3) Where a resident's earnings consist of or include royalties or sums paid periodically for or in respect of any copyright and immediately before the date of one such payment he is in receipt of income support, that payment ("the royalty payment") shall be taken into account over such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of the royalty payment by—

- (a) unless sub-paragraph (b) applies, the weekly amount of income support which would have been paid to him, had the royalty payment not been made; or
- (b) in circumstances where the royalty payment has disqualified the resident from receiving income support, the weekly amount referred to in sub-paragraph (a) added to the weekly amount of any part of the royalty payment which would have fallen to be disregarded in the calculation of his income support (as is appropriate to his case).

### **Earnings of employed earners**

13. A resident's gross earnings derived from employment as an employed earner shall be assessed in accordance with the definition of "earnings" in regulation 28 of the Housing Benefit (General) Regulations (earnings of employed earners)(23).

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

14.—(1) For the purposes of regulation 18, the earnings of a resident derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings calculated in accordance with the method prescribed in regulation 36(3) of the Income Support Regulations (calculation of net earnings of employed earners).

(2) There shall be disregarded from the calculation of a resident's net earnings under paragraph (1) any sum, where applicable, specified in Schedule 2.

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(23) S.I. 1987/1971.

### Calculation of income other than earnings

15.—(1) For the purposes of regulation 18, the income of a resident which does not consist of earnings to be taken into account shall, subject to paragraphs (2) and (3), be his gross income and any capital treated as income under regulations 16 and 17 (capital treated as income and notional income).

(2) There shall be disregarded from the calculation of a resident's gross income under paragraph (1) any sum, where applicable, specified in Part I of Schedule 3, in accordance with Part II of that Schedule.

(3) Where the payment of any benefit under the Contributions and Benefits 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 before that deduction is made.

### Capital treated as income

16.—(1) Any capital payable to the resident by instalments which—

- (a) are outstanding on the first day from which a resident becomes liable to pay for his accommodation; or
- (b) where a local authority limits the payments required from a resident for his accommodation pursuant to section 22(5A) of the Act, are outstanding on the first day on which the local authority ceases to limit the payments required from the resident pursuant to section 22(5A) of the Act,

shall, if the aggregate of the instalments outstanding and the amount of the resident's capital otherwise calculated in accordance with Part III of these Regulations exceeds the amount specified in regulation 41(1) of the Income Support Regulations<sup>(24)</sup> (capital treated as income), be treated as income.

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

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

### Notional income

17.—(1) A resident shall be treated as possessing income of which he has deprived himself for the purpose of decreasing the amount that he may be liable to pay for his accommodation.

(2) Subject to paragraph (3), a resident shall be treated as possessing any income which would be treated as income possessed by a claimant of income support under paragraphs (2) to (4) of regulation 42 of the Income Support Regulations<sup>(25)</sup> (notional income).

(3) For the purposes of paragraph (2), regulation 42(4) of the Income Support Regulations shall apply as if—

- (a) for the words in sub-paragraph (a)(ii) from “the food, ordinary” to the end of head (ii) there were substituted the words “any item which was taken into account when the standard rate was fixed for the accommodation provided”; and
- (b) the words from “except where sub-paragraph (a)(i) applies” to “the Act (trade disputes) applies” were deleted.

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<sup>(24)</sup> Amended by regulation 5(2) of S.I. 1990/671. The amount specified is currently £8,000.

<sup>(25)</sup> Amended by regulation 19(a) of S.I. 1988/663; regulation 10(a) of, and paragraph 4 of Schedule 1 to, S.I. 1988/1445; paragraph 7 of Schedule 1 to S.I. 1989/534; regulation 3(3)(a) of S.I. 1990/127; regulation 5(3) of S.I. 1991/1175; regulation 8 of S.I. 1991/1559; regulation 4 of S.I. 1992/468; regulation 6(3) of S.I. 1992/1101; and regulation 2 of S.I. 1992/1198.

(4) A resident shall be treated as possessing any income paid or due to be paid to a local authority by a third party pursuant to an agreement between the local authority and the third party made in connection with the liability of the resident to pay the local authority for his accommodation.

**Calculation of income derived from employed earners' employment and income other than earnings**

**18.**—(1) A resident's net earnings derived from employment as an employed earner and income which does not consist of earnings shall be taken into account as income—

- (a) in a case where it is payable in respect of a period, over a period equal to the length of that period and at a weekly amount determined in accordance with regulation 19; or
- (b) in any other case except where paragraph (2) applies, over a period of such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of that income—
  - (i) unless head (ii) applies, by the difference between the standard rate for the accommodation provided for that resident and the lower rate for that accommodation which he would be liable to pay if he did not possess that income;
  - (ii) where a resident would be assessed as liable to make no contribution towards the cost of his accommodation if he did not possess that income, by the standard rate for his accommodation.

(2) In a case where a resident's earnings as an employed earner or income other than earnings are not payable in respect of a period and immediately before a payment of such income ("the income payment") is made the resident is in receipt of income support, the income payment shall be taken into account over such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of the income payment by—

- (a) unless sub-paragraph (b) applies, the weekly amount of income support which would have been paid to him, had the income payment not been made; or
- (b) in circumstances where the income payment has disqualified the resident from receiving income support, the weekly amount referred to in sub-paragraph (a) added to the weekly amount of any part of the income payment which would have fallen to be disregarded in the calculation of his income support (as is appropriate to his case).

**Weekly amount of income derived from employed earners' income and income other than earnings**

**19.** For the purposes of regulation 18(1)(a) , where the period in respect of which payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall be determined—
  - (i) where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
  - (ii) where that period is three months, by dividing the amount of the payment by 13;
  - (iii) 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.

## PART III

### TREATMENT OF CAPITAL

#### Capital limit

**20.** No resident shall be assessed as unable to pay for his accommodation at the standard rate if his capital calculated in accordance with regulation 21 exceeds the amount prescribed for the purposes of section 134(1) of the Contributions and Benefits Act(**26**) (exclusions from benefit).

#### Calculation of capital

**21.**—(1) The capital of a resident to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 22.

(2) There shall be disregarded from the calculation of a resident's capital under paragraph (1) any capital, where applicable, specified in Schedule 4.

#### Income treated as capital

**22.**—(1) Any bounty which would be treated as capital under paragraph (1) of regulation 48 of the Income Support Regulations(**27**) (income treated as capital) shall be treated as capital.

(2) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 13 (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 5, 10 or 16 of Schedule 4, any income of a resident which is derived from capital shall be treated as capital but only from the date on which it is normally due to be paid to him.

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

(6) Any payment which would be treated as capital under paragraph (8) of regulation 48 of the Income Support Regulations(**28**) (income treated as capital) shall 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 which is made under the Fund, the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust or the Independent Living Fund, shall be treated as capital.

#### Calculation of capital in the United Kingdom

**23.**—(1) Except in a case to which paragraph (2) applies and subject to regulation 27(2), capital which a resident possesses in the United Kingdom shall be calculated at its current market or surrender value (whichever is higher), less—

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

(2) Capital in the form of a National Savings Certificate—

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**(26)** See regulation 45 of the Income Support Regulations, as amended by regulation 5(2) of S.I. 1990/671. The amount prescribed is currently £8,000.

**(27)** Amended by regulation 11(a) of S.I. 1988/1445.

**(28)** As respects England and Wales, paragraph (8) was substituted by paragraph 5 of the Schedule to S.I. 1992/468.



- (a) if it was purchased from an issue the sale of which ceased before the 1st July immediately preceding the date on which the resident's accommodation was provided, shall be calculated at the price which it would have realised on that 1st July had it been purchased on the last day of that issue;
- (b) in any other case, shall be calculated at its purchase price.

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

**24.** Capital which a resident possesses in a country outside the United Kingdom shall be calculated in accordance with the method prescribed in regulation 50 of the Income Support Regulations (calculation of capital outside the United Kingdom).

### **Notional capital**

**25.—**(1) A resident may be treated as possessing actual capital of which he has deprived himself for the purpose of decreasing the amount that he may be liable to pay for his accommodation 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 resident; or
- (b) to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 26.

(2) Subject to paragraph (3), a resident may be treated as possessing any payment of capital which would be treated as capital possessed by a claimant of income support under paragraph (2) or (3) of regulation 51 of the Income Support Regulations<sup>(29)</sup> (notional capital).

(3) For the purposes of paragraph (2)—

- (a) regulation 51(2) of the Income Support Regulations shall apply as if for the reference to Schedule 10 to those Regulations there were substituted a reference to Schedule 4 to these Regulations; and
- (b) regulation 51(3)(a)(ii) of the Income Support Regulations shall apply as if for the words from “the food, ordinary” to the end of sub-paragraph (a)(ii) there were substituted the words “any item which was taken into account when the standard rate was fixed for the accommodation provided”.

(4) A resident shall be treated as possessing any payment of capital made or due to be made to a local authority by a third party pursuant to an agreement between the local authority and the third party made in connection with the liability of the resident to pay the local authority for his accommodation.

(5) Where a resident is treated as possessing capital under any of paragraphs (1), (2) or (4), the foregoing provisions of this Part shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

### **Diminishing notional capital rule**

**26.—**(1) Where a resident is treated as possessing capital under regulation 25(1) (for the purposes of this regulation called “reducible notional capital”), for each week or part of a week that a local authority has determined that the resident shall be liable to pay for his accommodation at a higher rate than that at which he would have been assessed as liable to pay if he had no reducible notional

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<sup>(29)</sup> Amended by regulation 22(a) of S.I. 1988/663; regulation 12(a) of, and paragraph 4 of Schedule 1 to, S.I. 1988/1445; paragraph 7 of Schedule 1 to S.I. 1989/534; regulation 3(3)(c) of S.I. 1990/127; regulation 5(5) of S.I. 1991/1175; regulation 9 of S.I. 1991/1559; and regulation 6(5) of S.I. 1992/1101.

capital, the amount of his reducible notional capital shall be reduced by the method prescribed in paragraph (2).

(2) The local authority shall reduce the amount of the resident's reducible notional capital by the difference between—

- (a) the higher rate referred to in paragraph (1); and
- (b) the rate which he would have been assessed as liable to pay for his accommodation for that week or part of a week if he had been assessed as possessing no reducible notional capital.

### **Capital jointly held**

27.—(1) Where a resident and one or more other persons are beneficially entitled in possession to any capital asset except any interest in land—

- (a) they shall be treated as if each of them were entitled in possession to an equal share of the whole beneficial interest in that asset; and
- (b) that asset shall be treated as if it were actual capital.

(2) Where a resident and one or more other persons are beneficially entitled in possession to any interest in land—

- (a) the resident's share shall be valued at an amount equal to the price which his interest in possession would realise if it were sold to a willing buyer, less than 10 per cent and the amount of any incumbrance secured solely on his share of the whole beneficial interest; and
- (b) the value of his interest so calculated shall be treated as if it were actual capital.

### **Calculation of tariff income from capital**

28. A resident's tariff income from capital shall be calculated in accordance with the method prescribed in regulation 53 of the Income Support Regulations(30) (calculation of tariff income from capital), except that for the purposes of this regulation the references in regulation 53(3) of the Income Support Regulations to regulations 48 and 60 of the Income Support Regulations (income treated as capital and liable relative payments treated as capital) shall be construed as references to regulations 22 and 34 of these Regulations (income treated as capital and liable relative payments treated as capital) respectively.

## **PART IV**

### **LIABLE RELATIVES**

#### **Interpretation**

29. In this Part, unless the context otherwise requires—

“payment” has the meaning prescribed in regulation 54 of the Income Support Regulations(31) (interpretation), but as though sub-paragraph (h) of the definition in that regulation were omitted and as though the reference in it to a “liable relative” were to a liable relative as defined in regulation 2(1) of these Regulations;

“periodical payment” means—

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(30) Amended by regulation 13 of S.I. 1988/2022 and regulation 5(2) of S.I. 1990/671.

(31) Amended by regulation 23 of S.I. 1988/663.

- (a) a payment which is made or due to be made to a resident at regular intervals in pursuance of a court order or agreement for maintenance;
  - (b) in a case where a liable relative has established a pattern of making payments to a resident at regular intervals, any such payment;
  - (c) any payment representing a commutation of payments to which sub-paragraph (a) or (b) of this definition applies whether made in arrears or advance,
- but does not include a payment due to be made before the resident was provided with his accommodation.

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

**30.** Except where regulation 34(1) applies, a payment made to a resident by a liable relative shall be—

- (a) treated as income; and
- (b) taken into account in accordance with the following provisions of this Part.

#### **Period over which periodical payments are to be taken into account**

**31.** The period over which a periodical payment is to be taken into account shall be calculated in accordance with the method prescribed in paragraph (1) but not paragraph (2) of regulation 56 of the Income Support Regulations (period over which periodical payments are to be taken into account).

#### **Period over which payments other than periodical payments are to be taken into account**

**32.—**(1) Subject to the other provisions of this regulation and of regulation 34, the number of weeks over which a payment other than a periodical payment shall be taken into account shall be equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing that payment by the difference between—

- (a) the standard rate for the resident's accommodation; and
- (b) the lower rate for that accommodation which he would have been liable to pay if he had not received that payment.

(2) Subject to paragraph (4), where—

- (a) a liable relative makes a periodical payment and any other payment concurrently; and
- (b) the weekly amount of the periodical payment, as calculated in accordance with regulation 33, is less than the divisor referred to in paragraph (1),

the number of weeks over which the payment other than the periodical payment shall be taken into account shall be equal to the apposite number of weeks calculated by the method prescribed in paragraph (3).

(3) The apposite number of weeks referred to in paragraph (2) shall be the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of the other payment by the difference between—

- (a) the standard rate for the resident's accommodation; and
- (b) the lower rate for that accommodation which he would be liable to pay if he had not received the other payment (but had received the periodical payment).

(4) Subject to regulation 34, where—

- (a) a resident receives a payment other than a periodical payment; and

- (b) immediately before the date on which that payment is made he is in receipt of income support,

the number of weeks over which the payment other than a periodical payment (“the non-periodical payment”) shall be taken into account (whether or not the resident is in receipt of any periodical payments) shall be equal to the apposite number of weeks calculated by the method prescribed in paragraph (5).

(5) The apposite number of weeks referred to in paragraph (4) shall be equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of the non-periodical payment by—

- (a) unless sub-paragraph (b) applies, the weekly amount of income support which would have been paid to him, had the non-periodical payment not been made; or
- (b) in circumstances where the non-periodical payment has disqualified the resident from receiving income support, the weekly amount referred to in sub-paragraph (a) added to the weekly amount of any part of the non-periodical payment which would have fallen to be disregarded in the calculation of his income support (as is appropriate to his case).

#### **Calculation of the weekly amount of a liable relative payment**

**33.**—(1) Subject to paragraph (2), the weekly amount of a payment made by a liable relative shall be calculated by the method prescribed in regulation 58 of the Income Support Regulations (calculation of the weekly amount of a liable relative payment).

(2) For the purposes of paragraph (1), the reference in regulation 58(5) of the Income Support Regulations to regulation 57 of the Income Support Regulations (period over which payments other than periodical payments are to be taken into account) shall be construed as a reference to regulation 32 of these Regulations.

#### **Liable relative payments to be treated as capital**

**34.**—(1) Subject to paragraph (2), where—

- (a) a liable relative makes a periodical payment and any other payment concurrently; and
- (b) the weekly amount of the periodical payment as calculated in accordance with regulation 33 is equal to or greater than the amount of the divisor calculated by the method prescribed in regulation 32(1),

the other payment shall 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 shall be taken into account as a payment other than a periodical payment, in accordance with regulation 32(1) or (4) (as is appropriate to his case).

## **PART V**

### **STUDENTS**

#### **Interpretation**

**35.** In this Part, unless the context otherwise requires—

“access income” means a payment derived from funds made available by the Secretary of State for the purpose of assisting students in financial difficulties under section 100 of the Education

Act 1944(32), sections 131 and 132 of the Education Reform Act 1988(33) or section 73 of the Education (Scotland) Act 1980(34);

“contribution”, “covenant income” and “education authority” have the meanings prescribed in regulation 61 of the Income Support Regulations(35) (interpretation);

“grant income” means any income by way of any educational grant or award including any contribution (whether paid by covenant or otherwise), except access income;

“standard maintenance grant” has the meaning prescribed in regulation 61 of the Income Support Regulations;

“student loan” means a loan which is made to a student pursuant to arrangements made under one of the provisions specified in regulation 66A(1) of the Income Support Regulations(36) (treatment of student loans).

### **Calculation of grant income**

**36.**—(1) The amount of a student’s grant income to be taken into account shall be the amount of standard maintenance grant included in his grant income and the local authority shall disregard the difference between that amount and the whole of his grant income.

(2) The amount to be taken into account shall be apportioned—

- (a) in a case where it is attributable to a period of study, equally between the weeks in that period;
- (b) in any other case, equally between the weeks of the period in respect of which it is payable.

### **Covenant income where there is no grant income**

**37.**—(1) Where a student is not in receipt of any grant income, the amount of covenant income to be taken into account shall be the amount of standard maintenance grant which, had the student been in receipt of a standard maintenance grant, would have been taken into account under regulation 36(1) (calculation of grant income) and the local authority shall disregard the difference between that amount and the total amount of his covenant income.

(2) The amount to be taken into account shall be apportioned equally between the weeks of the period in respect of which it is payable.

### **Relationship with amounts disregarded under Schedule 3**

**38.** No part of a student’s covenant income or grant income shall be disregarded under paragraph 10 of Schedule 3 (charitable or voluntary payments).

### **Treatment of student loans**

**39.** Student loans shall be treated in accordance with regulation 66A of the Income Support Regulations(37) (treatment of student loans).

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(32) 1944 c. 31.

(33) 1988 c. 40.

(34) 1980 c. 44.

(35) As amended by regulation 14 of S.I. 1988/2022.

(36) Regulation 66A of the Income Support Regulations was inserted by regulation 5(7) of S.I. 1990/1549, and paragraph (1) was amended by regulation 9 of S.I. 1991/236.

(37) Regulation 66A(2) of the Income Support Regulations was amended by regulation 12 of S.I. 1991/1559.

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**Treatment of access income**

**40.**—(1) Access income paid or due to be paid at regular intervals shall be treated as income other than earnings for the purposes of Part II (treatment of income) and as a voluntary payment for the purposes of paragraph 10 of Schedule 3 (charitable or voluntary payments).

(2) Access income not paid or due to be paid at regular intervals shall be treated as capital for the purposes of Part III (treatment of capital).

30th November 1992

*Virginia Bottomley*  
One of Her Majesty's Principal Secretaries of  
State

## SCHEDULE 1

Regulation 8

### TRANSITIONAL PROVISIONS

#### PART I

##### INTERPRETATION

1. In this Schedule, unless the context otherwise requires—
  - “the new rules” means the provisions in these Regulations, apart from regulation 8 (transitional provisions) and this Schedule;
  - “the Administration Act” means the Social Security Administration Act 1992(38);
  - “disregard” (when used as a noun) means a specified weekly amount to be disregarded;
  - “the old rules” means the provisions in Part III of Schedule 1 to the Supplementary Benefits Act 1976(39), as it had effect immediately before amendments made by Schedule 2 to the Social Security Act 1980(40);
  - “protected amount” means the amount which a local authority determines that a resident shall be liable to pay for his accommodation after—
    - (a) having assessed his ability to pay for his accommodation in accordance with the new rules and the old rules under paragraph 6(1) or (2) and having concluded in accordance with paragraph 6(3) that the old rules shall continue to apply to that resident; or
    - (b) any further revision of that amount in accordance with paragraph 7 or 8;
  - “temporarily absent” means absent for—
    - (a) a period spent in hospital of 52 weeks or less; or
    - (b) any other period of 13 weeks or less.

#### PART II

##### THE FIRST STAGE

2. This Part of this Schedule applies to any resident who immediately before these Regulations come into force is in, or temporarily absent from, accommodation provided under Part III of the Act(41) other than that provided under section 29(4)(c) of the Act(42) (provision of hostels where persons for whom welfare services are provided may live).
3. From the date on which these Regulations come into force until 11th April 1993 (both dates inclusive), for the purposes of assessing the ability of a resident to whom this Part of this Schedule applies to pay for his accommodation, a local authority shall continue to give effect to the old rules.

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(38) 1992 c. 5.

(39) 1976 c. 71; as amended by section 14(9) of the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), and as modified by S.I. 1978/1526.

(40) 1980 c. 30.

(41) As respects Scotland, see section 65(f) of the Act, as amended by paragraph 5(9) of Schedule 9 to the National Health Service and Community Care Act 1990, and section 87(3) of the Social Work (Scotland) Act 1968.

(42) Amended by section 14(1) of and paragraph 3 of Schedule 3 to the Employment and Training Act 1973 (c. 50).

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## PART III

### THE SECOND STAGE

4.—(1) Subject to sub-paragraph (2) and paragraph 5, this Part of this Schedule applies to any resident who—

- (a) on 11th April 1993 is in, or temporarily absent from, accommodation provided under Part III of the Act other than that provided under section 29(4)(c) of the Act (provision of hostels where persons for whom welfare services are provided may live); and
- (b) was in, or temporarily absent from, such accommodation immediately before these Regulations came into force.

(2) This Part of this Schedule shall apply to such a resident only if on 11th April 1993 he—

- (a) qualifies, or would qualify if he were not temporarily absent from such accommodation, for any of the disregards under the old rules and the aggregated weekly total of any such disregards is, or would be, more than £1 higher than the aggregated weekly total of the disregards for which he would qualify under the new rules; or
- (b) is in possession of capital in excess of or equal to the amount referred to in regulation 20 (capital limit).

5. This Part of this Schedule shall not apply to—

- (a) less dependent residents; or
- (b) residents who on 11th April 1993 are paying for their accommodation at the standard rate or who would be paying for it at that rate if they were not temporarily absent from their accommodation.

6.—(1) Subject to paragraph (2), the liability of a resident to whom this Part of this Schedule applies to pay for his accommodation shall in respect of the week beginning 12th April 1993 be assessed both in accordance with the new rules and in accordance with the old rules.

(2) If a resident is temporarily absent from the accommodation provided for him under Part III of the Act during the week beginning 12th April 1993, he shall be assessed both in accordance with the new rules and in accordance with the old rules in respect of the first full week after his return to that accommodation.

(3) If a resident is assessed under the old rules as liable to pay for his accommodation a charge which is lower than the charge which he is assessed as liable to pay for his accommodation under the new rules, then for the purposes of assessing his ability to pay for his accommodation, the old rules shall, subject to the following provisions of this Part of this Schedule, continue to apply to that resident from 12th April 1993.

7.—(1) Subject to paragraph 9, following the projected review of income support for the tax year 1994—1995 in accordance with section 150 of the Administration Act(43) (annual up-rating of benefits) and any consequential order up-rating income support made under that section, a resident's protected amount shall be increased by 33 per cent of the difference between—

- (a) the amount which in respect of the first full week after the date on which that order comes into force(44) he would be liable to pay for his accommodation in accordance with the new rules; and
- (b) his protected amount as assessed under paragraph 6 or as redetermined in accordance with paragraph 8.

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(43) See section 150(1)(h) of that Act.

(44) See section 150(10)(a) of the Administration Act.



(2) Subject to paragraph 9, following the projected review of income support for the tax year 1995—1996 in accordance with section 150 of the Administration Act and any consequential order up-rating income support made under that section, a resident's protected amount shall be increased by 33 per cent of the difference between—

- (a) the amount which in respect of the first full week after the date on which that order comes into force he would be liable to pay for his accommodation in accordance with the new rules; and
- (b) his protected amount as redetermined in accordance with sub-paragraph (1) or in accordance with paragraph 8.

(3) Following the projected review of income support for the tax year 1996—1997 in accordance with section 150 of the Administration Act and any consequential order up-rating income support made under that section, the provisions of this Part of this Schedule shall cease to apply in all cases on the date on which that order comes into force.

(4) If in relation to any of sub-paragraphs (1) to (3) no up-rating order is made in a relevant tax year, the reference in the relevant sub-paragraph to the date of an order coming into force shall be construed as a reference to the first Monday in the tax year referred to in that sub-paragraph.

**8.—(1)** Subject to the following provisions of this paragraph, once a resident has been assessed as liable to pay a protected amount for his accommodation, any increase in his income or capital shall not affect the level of his protected amount.

(2) When a resident's protected amount is redetermined in accordance with paragraph 7, any increase in his income or capital shall be taken into consideration for the purposes of any calculation under the new rules which is made for the purposes of that paragraph.

(3) If a resident's resources are increased by—

- (a) any income such as is mentioned in regulation 17(4); or
- (b) any payment of capital such as is mentioned in regulation 25(4),

in respect of the first full week after that increase in his resources, that resident shall be assessed both in accordance with the new rules and in accordance with the old rules, and paragraphs (4) to (7) shall apply.

(4) If the charge which the resident is assessed as liable to pay under the old rules is lower than the charge which he is assessed as liable to pay under the new rules, for the purposes of assessing his ability to pay for his accommodation, the old rules shall continue to apply to him and his new protected amount shall, subject to sub-paragraphs (5) and (6), be the amount which he is assessed under the old rules as liable to pay for his accommodation.

(5) If the two assessments referred to in sub-paragraph (3) are carried out during the tax year 1994—1995, the resident's new protected amount determined in accordance with paragraph (4) shall be increased by 33 per cent of the difference between the charges determined in accordance with those two assessments unless those assessments are carried out before an order up-rating income support made under section 150 of the Administration Act has come into force during that tax year.

(6) If the two assessments referred to in sub-paragraph (3) are carried out during the tax year 1995—1996, the resident's new protected amount determined in accordance with paragraph (4) shall be increased by 66 per cent of the difference between the charges determined in accordance with those two assessments unless those assessments are carried out before an order up-rating income support made under section 150 of the Administration Act has come into force during that tax year, in which case the increase shall be 33 per cent of that difference.

(7) If the charge which a resident is assessed under the new rules as liable to pay for his accommodation in accordance with sub-paragraph (3) is equal to or lower than the charge which he

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is assessed as liable to pay under the old rules, the provisions of this Part of this Schedule shall cease to apply to that resident from the date of the increase in resources which led to those assessments.

**9.** Once a resident has been assessed as liable to pay a protected amount for his accommodation, if on any date—

- (a) because of a reduction in his income or capital; or
- (b) as a result of a redetermination of his protected amount in accordance with paragraph 7,

the charge that he would be liable to pay in accordance with the new rules exceeds his protected amount by less than £1 or is equal to or lower than his protected amount, the provisions of this Part of this Schedule shall cease to apply to him from that date.

**10.** Once a resident has been assessed as liable to pay a protected amount for his accommodation, if a local authority arranges different accommodation for him under Part III of the Act, the provisions of this Part of this Schedule shall, notwithstanding those different arrangements, continue to apply to him as if he had continued to live in the accommodation where he was first assessed in accordance with the provisions in this Part of this Schedule.

**11.** If a resident who has been assessed as liable to pay a protected amount for his accommodation is temporarily absent from his accommodation, a local authority shall continue to allow him to pay a protected amount for that accommodation on his return.

## SCHEDULE 2

Regulations 11(3) and 14(2)

### SUMS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS

**1.** In the case of a resident who—

- (a) has been employed as an employed earner; or
- (b) had the employment been in Great Britain, would have been so employed,

and whose employment has been terminated or interrupted, any earnings paid or due to be paid in respect of that employment.

**2.** In the case of a resident—

- (a) who has been engaged in any work as a self-employed earner; or
- (b) had the work been in Great Britain, would have been so engaged,

and who has ceased to be so engaged, from the date of cessation of his work any earnings derived from that work except earnings to which regulation 12(2) or (3) (royalties etc.) applies.

**3.—(1)** In a case to which this paragraph applies, the amount specified in paragraph 4(1) of Schedule 8 to the Income Support Regulations<sup>(45)</sup> (disregard for claimants in receipt of a disability premium etc.).

(2) This paragraph applies where a resident—

- (a) receives income support which includes an amount by way of disability premium under Schedule 2 to the Income Support Regulations<sup>(46)</sup> (applicable amounts); or
- (b) is under the age of 60 and—

<sup>(45)</sup> Substituted by regulation 10 of S.I. 1989/534. The amount specified is currently £15.

<sup>(46)</sup> See paragraph 4 of Schedule 2 to the Income Support Regulations, amended by regulation 19 of S.I. 1988/1445 and regulation 8(a) of S.I. 1990/1776; paragraph 11 of Schedule 2 to the Income Support Regulations, amended by regulation 29(b) of S.I. 1988/663; and paragraph 15(4) of Schedule 2 to the Income Support Regulations.

- (i) receives an attendance allowance, a disability living allowance, a disability working allowance, a mobility supplement, an invalidity pension, or a severe disablement allowance, or
  - (ii) is provided with an invalid carriage or other vehicle under section 5(2)(a) of the National Health Service Act 1977<sup>(47)</sup> (invalid carriages) or under section 46 of the National Health Service (Scotland) Act 1978<sup>(48)</sup> (provision of vehicles), or
  - (iii) receives any payment by way of a grant under paragraph 2 of Schedule 2 to the National Health Service Act 1977 (additional provisions as to vehicles) or under section 46 of the National Health Service (Scotland) Act 1978 (provision of vehicles), or
  - (iv) is registered as blind under section 29(4)(g) of the Act (welfare arrangements for blind persons etc.), or, in Scotland, is registered as blind in a register maintained by or on behalf of a regional or islands council, or
  - (v) for a continuous period of not less than 28 weeks has provided medical evidence of incapacity in support of a claim for sickness benefit, invalidity pension or severe disablement allowance, or
  - (vi) would be in receipt of attendance allowance or the care component of disability living allowance had it not been withdrawn solely because he has been in accommodation provided under Part III of the Act for more than 4 weeks; or
- (c) has attained the age of 60 and—
- (i) satisfies one of the conditions set out in heads (i) to (vi) in paragraph (b),
  - (ii) satisfied one of those conditions before he attained the age of 60, and
  - (iii) is in remunerative work and has continued to be engaged in remunerative work since before he attained the age of 60; or
- (d) is not one of a couple and has a child living with him.
- 4.** In a case to which paragraph 3 does not apply to the resident, the amount specified in paragraph 9 of Schedule 8 to the Income Support Regulations<sup>(49)</sup> (disregard for those not qualifying for the higher disregard).
- 5.** Any earnings which would be disregarded under paragraph 11 of Schedule 8 to the Income Support Regulations (earnings outside the United Kingdom).
- 6.** Any amount which would be disregarded under paragraph 4 of Schedule 9 to the Income Support Regulations (part of statutory sick pay).

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<sup>(47)</sup> 1977 c. 49.

<sup>(48)</sup> 1978 c. 29.

<sup>(49)</sup> The amount specified is currently £5.

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SCHEDULE 3

Regulation 15(2)

SUMS TO BE DISREGARDED IN THE CALCULATION  
OF INCOME OTHER THAN EARNINGS

PART I

SUMS TO BE DISREGARDED

1. Any amount paid by way of tax on income which is taken into account under regulation 15 (calculation of income other than earnings).

2. Any payment in respect of any expenses incurred by a resident who is—

- (a) engaged by a charitable or voluntary body; or
- (b) a volunteer,

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

3. Any payment which would be disregarded under paragraph 3, 4A or 5 of Schedule 9 to the Income Support Regulations<sup>(50)</sup> (employed earner expenses, statutory sick pay in Northern Ireland and housing benefit).

4. The mobility component of any disability living allowance.

5. Any payment which would be disregarded under paragraph 8 of Schedule 9 to the Income Support Regulations.

6. If the resident is a temporary resident—

- (a) any attendance allowance; or
- (b) the care component of any disability living allowance.

7. Any concessionary payment made to compensate for the non-payment of—

- (a) any payment specified in paragraph 4 or 6; or
- (b) any income support.

8. Any amount which would be disregarded under paragraph 10 or 11 of Schedule 9 to the Income Support Regulations (payments to medal recipients and educational awards).

9. Any amount which would be disregarded under paragraph 13 or 14 of Schedule 9 to the Income Support Regulations<sup>(51)</sup> (participants in training schemes and job start allowance).

10.—(1) Except where sub-paragraph (2) applies, and subject to paragraphs 29 and 31, the amount specified in paragraph 15(1) of Schedule 9 to the Income Support Regulations<sup>(52)</sup> (charitable or voluntary payments) of any charitable payment or of any voluntary payment made or due to be made at regular intervals other than any payment which is to be disregarded under paragraph 24.

(2) Subject to paragraph 29, any charitable payment or voluntary payment made or due to be made at regular intervals which is intended and used for any item which was not taken into account when the standard rate was fixed for the accommodation provided.

<sup>(50)</sup> Paragraph 4A was inserted by regulation 35(a) of S.I. 1988/663.

<sup>(51)</sup> Paragraph 13 was substituted by regulation 35(b) of S.I. 1988/663, and amended by articles 2 and 9(g) of and the Schedule to S.I. 1991/387.

<sup>(52)</sup> Substituted by regulation 22(a) of S.I. 1990/547. The amount specified is currently £10.

**11.** Any amount which would be disregarded under paragraph 16 of Schedule 9 to the Income Support Regulations(**53**) (specified pensions), but as if the reference in paragraph 16 of Schedule 9 to the Income Support Regulations to paragraphs 36 and 37 of Schedule 9 to the Income Support Regulations were a reference to paragraph 31 of this Schedule.

**12.** Any payment which would be disregarded under paragraphs 17 to 20 of Schedule 9 to the Income Support Regulations(**54**) (annuities, payments by third parties towards living costs, contractual payments in respect of occupation of a dwelling and payments by lodgers).

**13.** Any income in kind.

**14.**—(1) Any income derived from capital to which the resident is or is treated under regulation 27 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraph 1, 2, 5, 10 or 16 of Schedule 4.

(2) Any income derived from capital disregarded under paragraph 2 or 16 of Schedule 4 but only to the extent of any mortgage repayments and payments of council tax or water charges which the resident is liable to make in respect of the dwelling or premises in the period during which that income accrued.

**15.** Any income which would be disregarded under paragraph 23 of Schedule 9 to the Income Support Regulations (income outside the United Kingdom).

**16.** Any amount which would be disregarded under paragraph 24 of Schedule 9 to the Income Support Regulations (charge or commission for converting income into sterling).

**17.** Any payment made to a resident in respect of a child or young person who is a member of his family—

- (a) in accordance with regulations made pursuant to section 57A of the Adoption Act 1976(**55**) (permitted allowances);
- (b) in accordance with a scheme approved by the Secretary of State under section 57(4) of the Adoption Act 1976 (approved schemes) or section 51 of the Adoption (Scotland) Act 1978(**56**) (schemes for payment of allowances to adopters);
- (c) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989(**57**) (local authority contribution to a child's maintenance where a child is living with a person as a result of a residence order);
- (d) which is a payment by a local authority towards the cost of the accommodation and maintenance of a child following a custodianship order under section 33 of the Children Act 1975(**58**); or
- (e) which is a payment made by a local authority in pursuance of section 50 of the Children Act 1975(**59**) (payments towards maintenance of children).

**18.** Any payment which would be disregarded under paragraph 26 or 28 of Schedule 9 to the Income Support Regulations(**60**) (provision of accommodation and maintenance for children in care,

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(53) Amended by regulation 22(b) of S.I. 1990/547 and regulation 20(b) of S.I. 1991/1559.

(54) Paragraph 18 was amended by regulation 22(a) of S.I. 1988/2022; paragraph 19 was amended by paragraph 9(a) of Schedule 1 to S.I. 1988/1445 and article 13(13) of S.I. 1991/2910; and paragraph 20 was substituted by regulation 22(c) of S.I. 1990/547.

(55) 1976 c. 36; section 57A was introduced by paragraph 25 of Schedule 10 to the Children Act 1989 (c. 41). The relevant instruments are S.I. 1991/2030 and S.I. 1991/2130.

(56) 1978 c. 28.

(57) 1989 c. 41.

(58) 1975 c. 72; the power to make payments pursuant to orders under section 33 was transitionally preserved for this purpose by article 2(c) of and paragraph 1 of the Schedule to S.I. 1991/1990.

(59) As amended by section 64 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).

(60) Amended by regulation 25(b) of S.I. 1988/1445 and (as respects England and Wales) by paragraph 9(b) of the Schedule to S.I. 1992/468.

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and local authorities' duty to promote the welfare of children and powers to grant financial assistance to persons in or formerly in their care).

**19.** Any payment received under an insurance policy, taken out to insure against the risk of being unable to maintain repayments on a loan to acquire or retain an interest in a dwelling occupied as the home, or for repairs and improvements to the dwelling, and used to meet such repayments, to the extent that it does not exceed the aggregate of—

- (a) the amount payable, calculated on a weekly basis, of any interest on the loan;
- (b) the amount of any payment, calculated on a weekly basis, due on the loan attributable to the repayment of capital; and
- (c) the amount, calculated on a weekly basis, of the premium due on that policy.

**20.** Any payment which would be disregarded under paragraph 31 of Schedule 9 to the Income Support Regulations(**61**) (social fund payments).

**21.** Any payment of income which under regulation 22 (income treated as capital) is to be treated as capital.

**22.** Any payment which would be disregarded under paragraph 33 of Schedule 9 to the Income Support Regulations (pensioner's Christmas bonus).

**23.** Any payment which would be disregarded under paragraph 38 of Schedule 9 to the Income Support Regulations(**62**) (resettlement benefit).

**24.** Any payment which would be disregarded under paragraph 39 of Schedule 9 to the Income Support Regulations(**63**) (the Fund, the Macfarlane Trusts and the Independent Living Fund).

**25.** Any amount which would be disregarded under paragraphs 40 to 51 of Schedule 9 to the Income Support Regulations(**64**) (housing benefit compensation, supplementary benefit compensation, housing benefit supplement compensation, juror and witness payments, community charge rebate, community charge benefit, reduction of liability for personal community charge, special war widows payments, travelling expenses and health service supplies, welfare food payments, prison visiting scheme payments, and disabled persons' employment payments).

**26.** Any payment of income support made towards housing costs determined in accordance with Schedule 3 to the Income Support Regulations (housing costs).

**27.** Any housing costs of any temporary resident, including any fuel charges, which are included in the rent of a dwelling to which he intends to return, to the extent that the local authority consider it reasonable in the circumstances to do so.

**28.** Any council tax benefit.

## PART II

### SPECIAL PROVISIONS RELATING TO CHARITABLE OR VOLUNTARY PAYMENTS AND CERTAIN PENSIONS

**29.** Paragraph 10 shall not apply to any payment which is made or due to be made—

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(61) As substituted by regulation 8(2) of S.I. 1992/468.

(62) Paragraph 38 of Schedule 9 to the Income Support Regulations was inserted by regulation 35(f) of S.I. 1988/663.

(63) Paragraph 39 was inserted by regulation 35(f) of S.I. 1988/663, substituted by regulation 5(7)(b) of S.I. 1991/1175, and amended by regulation 6(7)(b) of S.I. 1992/1101.

(64) Paragraph 40 of Schedule 9 to the Income Support Regulations was inserted by regulation 25(d) of S.I. 1988/1445; paragraphs 41 to 44 were added by regulation 22(b) of S.I. 1988/2022; paragraphs 45 to 47 were added by regulation 22(e) of S.I. 1990/547; paragraphs 48 to 50 were added by regulation 10(b) of S.I. 1990/1776; and paragraph 51 was added by regulation 8(3) of S.I. 1992/468.

- (a) by a person for the maintenance of any member of his family or of his former partner or of his children; or
- (b) by a third party pursuant to an agreement between the local authority and that third party in connection with the liability of the resident to pay the local authority for his accommodation.

**30.** For the purposes of paragraph 10(1), where a number of charitable or voluntary payments fall to be taken into account in any one week they shall be treated as though they were one such payment.

**31.** The total income to be disregarded pursuant to paragraphs 10(1) and 11 shall in no case exceed the amount per week specified in paragraph 36 of Schedule 9 to the Income Support Regulations(**65**) (ceiling for aggregated disregards).

#### SCHEDULE 4

Regulation 21(2)

#### CAPITAL TO BE DISREGARDED

**1.** The value of one dwelling (and not more than one dwelling) of a temporary resident in circumstances where—

- (a) he intends to return to occupy that dwelling as his home; and
- (b) the dwelling to which he intends to return is still available to him.

**2.** The value of any premises which would be disregarded under paragraphs 2 or 4 of Schedule 10 to the Income Support Regulations(**66**) (premises acquired for occupation and premises occupied by a third party).

**3.** The value of the proceeds of sale of any premises which would be disregarded under paragraph 3 of Schedule 10 to the Income Support Regulations (proceeds of sale from premises formerly occupied).

**4.** Any reversionary interest.

**5.** Any assets which would be disregarded under paragraph 6 of Schedule 10 to the Income Support Regulations(**67**) (business assets), but as if in sub-paragraph (2) of that paragraph for the words from “the claim for income support” to the end of that sub-paragraph there were substituted the words “the accommodation was initially provided”.

**6.** Any amount which would be disregarded under paragraph 7 of Schedule 10 to the Income Support Regulations(**68**) (arrears of specified payments), but as if the reference in sub-paragraph (a) of that paragraph to paragraph 6, 8, 9 or 9A of Schedule 9 to the Income Support Regulations (other income to be disregarded) were a reference to paragraphs 4 to 6 of Schedule 3 to these Regulations (other income to be disregarded).

**7.** Any amount which would be disregarded under paragraph 8 or 9 of Schedule 10 to the Income Support Regulations (property repairs and amounts deposited with a housing association).

**8.** Any personal possessions except those which had or have been acquired by a resident with the intention of reducing his capital in order to satisfy a local authority that he was unable to pay for his accommodation at the standard rate or to reduce the rate at which he would otherwise be liable to pay for his accommodation.

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(65) The relevant amending instrument is regulation 22(d) of S.I. [1990/547](#). The amount specified is currently £10.

(66) Paragraph 2 was amended by regulation 26(a) of S.I. [1988/1445](#); paragraph 4 was amended by regulation 3(a) of S.I. [1988/910](#), regulation 26(b) of S.I. [1988/1445](#), and regulation 11(a) of S.I. [1990/1776](#).

(67) Amended by regulation 11(b) of S.I. [1990/1776](#).

(68) Amended by regulation 11(7) of S.I. [1991/2742](#).

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9. Any amount which would be disregarded under paragraph 11 of Schedule 10 to the Income Support Regulations (income under an annuity).
10. Any amount which would be disregarded under paragraph 12 of Schedule 10 to the Income Support Regulations(69) (personal injury trusts).
11. Any amount which would be disregarded under paragraph 13 of Schedule 10 to the Income Support Regulations (a life interest or a liferent).
12. The value of the right to receive any income which is disregarded under paragraph 5 of Schedule 2 or paragraph 15 of Schedule 3 (earnings or other income to be disregarded).
13. Any amount which would be disregarded under paragraphs 15, 16, 18 or 19 of Schedule 10 to the Income Support Regulations(70) (surrender value of life insurance policy, outstanding instalments, social fund payments and tax refunds on certain loan interest).
14. Any capital which under regulation 16 or 39 (capital treated as income and student loans) is to be treated as income.
15. Any amount which would be disregarded under paragraphs 21 to 24 of Schedule 10 to the Income Support Regulations(71) (charge or commission for converting capital into sterling, the Macfarlane Trusts, the Fund and the Independent Living Fund, personal or occupational pensions, and rent).
16. The value of any premises which would be disregarded under paragraph 27 or 28 of Schedule 10 to the Income Support Regulations(72) (premises a claimant intends to occupy).
17. Any amount which would be disregarded under paragraphs 29 to 43 of Schedule 10 to the Income Support Regulations(73) (fund payments in kind, training bonuses, housing benefit compensation, supplementary benefit compensation, housing benefit supplement compensation, juror or witness payments, community charge rebate, reduction of liability for personal community charge, housing grants, travelling expenses and health service supplies, welfare food payments, prison visiting scheme payments, special war widows payments, disabled persons' employment payments, and blind homeworkers' payments).
18. The value of any premises occupied in whole or in part by a third party where the local authority consider it would be reasonable to disregard the value of those premises.

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(69) Paragraph 12 of the Income Support Regulations was substituted by regulation 11(c) of S.I. [1990/1776](#).

(70) Paragraph 18 of Schedule 10 to the Income Support Regulations was substituted by regulation 9(2) of S.I. [1992/468](#).

(71) Paragraphs 22 to 24 were added by regulation 36(b) of S.I. [1988/663](#); paragraph 22 was then substituted by regulation 5(8) of S.I. [1991/1175](#) and amended by regulation 6(8)(a) of S.I. [1992/1101](#); and paragraph 23 was amended by regulation 21 of S.I. [1991/1559](#).

(72) Paragraphs 27 and 28 were inserted by regulation 3(b) of S.I. [1988/910](#), and paragraph 27 was then substituted by regulation 23(a) of S.I. [1988/2022](#).

(73) Paragraph 29 of Schedule 10 to the Income Support Regulations was added by regulation 26(c) of S.I. [1988/1445](#) and amended by regulation 3(4) of S.I. [1990/127](#), regulation 5(8)(b) of S.I. [1991/1175](#) and regulation 6(8)(b) of S.I. [1992/1101](#); paragraph 30 was added by regulation 26(c) of S.I. [1988/1445](#), and amended by articles 2 and 9(h) of, and the Schedule to, S.I. [1991/387](#); paragraph 31 was added by regulation 26(c) of S.I. [1988/1445](#); paragraphs 32 to 35 were added by regulation 23(b) of S.I. [1988/2022](#); paragraph 36 was added by regulation 23(a) of S.I. [1990/547](#); paragraph 37 was added by regulation 23(b) of S.I. [1990/547](#); paragraphs 38 to 41 were added by regulation 11(d) of S.I. [1990/1776](#); and paragraphs 42 and 43 were added by regulation 9(3) of S.I. [1992/468](#).



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## EXPLANATORY NOTE

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

These Regulations are the first regulations made under section 22(5) of the National Assistance Act 1948. They make similar provision for the assessment by local authorities of the resources of residents in accommodation arranged under Part III of the 1948 Act, the Social Work (Scotland) Act 1968 or section 7 of the Mental Health (Scotland) Act 1984, to the provision made under the Income Support (General) Regulations 1987 for the assessment of the resources of a claimant for income support—and many provisions of the 1987 Regulations are applied directly.

The assessment rules contained in Part III of Schedule 1 to the Supplementary Benefits Act 1976 (as it had effect immediately before the amendments made by Schedule 2 to the Social Security Act 1980) which were transitionally preserved for the purposes of the National Assistance Act 1948, will cease to have effect, subject to the transitional protection offered for existing residents in Schedule 1 to these Regulations.

Part I of these Regulations contains general provisions relating to assessments of a resident's ability to pay. These include a provision relating to the special treatment of less dependent residents (regulation 5).

Part II contains the provisions for the calculation of a resident's income. There is a general provision for how all income should be calculated on a weekly basis (regulation 9), and specific provisions for the calculation of the income of both employed and self-employed earners, and for the calculation of income other than earnings (regulations 10 to 19).

Part III contains the provisions for the calculation of a resident's capital, including setting a capital limit above which a resident is not entitled to be assessed as unable to pay for accommodation (regulation 20), which is aligned directly with the income support scheme. This Part also includes provisions relating to the calculation of notional capital (regulations 25 and 26), and the weekly tariff income from capital (regulation 28).

Part IV contains the special provisions in relation to the calculation of periodical and other payments made by liable relatives, and Part V makes special provision in relation to calculating the resources of students.