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## STATUTORY INSTRUMENTS

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# 2003 No. 325

## The Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003

### PART 2

#### Housing Benefit

##### Housing Benefit Regulations

2.—(1) The Housing Benefit Regulations shall have effect, except where paragraph (2) applies, in relation to any person who has attained the qualifying age for state pension credit subject to the modifications set out in this Part, Part 4 and Schedule 2.

(2) This paragraph applies if the claimant or, if the claimant has a partner, his partner, is a person on income support or on an income-based jobseeker's allowance within the meaning of the Housing Benefit Regulations(1).

(3) In this Part, references to regulations and Schedules are, unless the context otherwise requires, references to regulations of and Schedules to the Housing Benefit Regulations.

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##### Commencement Information

II Reg. 2 in force at 6.10.2003, see [reg. 1\(1\)\(b\)](#)

##### Interpretation

3.—(1) In regulation 2 (interpretation), in paragraph (1)—

(a) for the definition of “assessment period”, substitute—

““assessment period” means the period determined—

(a) in relation to the earnings of a self-employed earner, in accordance with regulation 32 for the purpose of calculating the weekly earnings of the claimant; or

(b) in relation to any other income, in accordance with regulation 28 for the purpose of calculating the weekly income of the claimant;”;

(b) for the definition of “the benefit Acts”, substitute—

““the benefit Acts” means the Contributions and Benefits Act, the Jobseekers Act 1995(2) and the State Pension Credit Act;”;

(c) after the definition of “benefit week”, insert—

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(1) See regulation 2(1) and (3A); paragraph (3A) was inserted by [S.I. 1996/1510](#).

(2) [1995 c. 18](#).

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

““board and lodging accommodation” means accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises;

“care home” has the meaning it has for the purposes of the Care Standards Act 2000(3) by virtue of section 3 of that Act and in Scotland means a care home service;

“care home service” has the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001(4);”;

[<sup>F1</sup>(cc) after the definition of “disability living allowance”, insert—

““dwelling occupied as the home” means the dwelling, together with any garage, garden and outbuildings, normally occupied by the claimant as his home, including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated;”;

(d) after the definition of “gateway office”(5), insert—

““guarantee credit” is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act;”;

(e) after the definition of “person on income support”, insert—

““person on state pension credit” means a person in receipt of state pension credit;”;

(f) after the definition of “retirement annuity contract” insert—

““savings credit” shall be construed in accordance with sections 1 and 3 of the State Pension Credit Act;”;

(g) after the definition of “self-employment route” insert—

““the State Pension Credit Act” means the State Pension Credit Act 2002;”.

(2) In that regulation, after paragraph (4A)(6), insert—

“(4B) In these Regulations references to any person in receipt of a guarantee credit, a savings credit or state pension credit includes a reference to a person who would be in receipt thereof but for regulation 13 of the State Pension Credit Regulations 2002(7) (small amounts of state pension credit).”.

**F1** [Reg. 3\(1\)\(cc\)](#) inserted (5.10.2003) by [The Housing Benefit and Council Tax Benefit \(State Pension Credit and Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2275\)](#), [regs. 1\(1\)\(a\)](#), **2(2)**

#### Commencement Information

**I2** [Reg. 3](#) in force at 6.10.2003, see [reg. 1\(1\)\(b\)](#)

#### [<sup>F2</sup>Modification of regulation 4

**3A.** After regulation 4(5A) (housing benefit—remunerative work)(2) insert—

(3) 2000 c. 14.

(4) 2001 asp 8.

(5) Relevant amending Instrument is [S.I. 1999/1539](#).

(6) Inserted by [S.I. 1996/1944](#).

(7) [S.I. 2002/1792](#).

(2) 1995 c. 18.

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“(5B) Paragraph (5) shall not apply for the purposes of regulation 27 (treatment of child care charges) or paragraph 9 of Schedule 3A (sums disregarded from earnings).”.]

**F2** [Reg. 3A](#) inserted (5.10.2003) by [The Housing Benefit and Council Tax Benefit \(State Pension Credit and Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2275\)](#), regs. 1(1)(a), **2(3)**

#### Commencement Information

**I3** [Reg. 3A](#) in force at 6.10.2003, see [reg. 1\(1\)\(b\)](#)

### Modification of regulation 5

**4.** In regulation 5 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) in paragraph (6)(c)(ii), for the words “or the claimant’s applicable amount includes a provision under paragraph 9, 9A, 10, 11, 13 or 14 of Schedule 2”, substitute “or the claimant is a person who has attained or whose partner has attained the qualifying age for state pension credit”.

#### Commencement Information

**I4** [Reg. 4](#) in force at 6.10.2003, see [reg. 1\(1\)\(b\)](#)

### Persons from abroad

**5.** In regulation 7A (persons from abroad), in paragraph (5), for sub-paragraph (d), substitute—  
“(d) is on state pension credit;”.

#### Commencement Information

**I5** [Reg. 5](#) in force at 6.10.2003, see [reg. 1\(1\)\(b\)](#)

### Applicable amounts

**6.—(1)** For regulations 16 (applicable amounts), 17 (polygamous marriages) and 18 (patients), substitute—

#### “Applicable amounts

**16.—(1)** Subject to regulations 69 and 70 and Schedule A1 (calculation of weekly amounts, rent free periods and treatment of claims for housing benefit by refugees), the applicable amount of a claimant who has attained or whose partner has attained the qualifying age for state pension credit shall be the aggregate of such of the following amounts as apply in his case—

- (a) an amount in respect of his personal allowance, determined in accordance with paragraph 1 of Schedule 2A;
- (b) an amount in respect of any child or young person who is a member of his family, determined in accordance with paragraph 2 of that Schedule;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with paragraph 3(1) of Part II of that Schedule (family premium);

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- (d) if he is a member of a family of which one member is a child under the age of one year, an additional amount determined in accordance with paragraph 3(2) of Part II of that Schedule;
- (e) the amount of any premiums which may be applicable to him, determined in accordance with Parts III and IV of that Schedule (premiums).

(2) Paragraph (3) applies in the case of—

- (a) a claimant who; or
- (b) a claimant who has a partner one or both of whom; or
- (c) a claimant who is a member of a polygamous marriage one or more of whose members,

is or are a patient, and has or have been a patient for a period exceeding 13 weeks but not exceeding 52 weeks, or, in exceptional circumstances, is unlikely to substantially exceed 52 weeks (“long term patient”).

(3) In the case of a claimant to whom this paragraph applies and who—

- (a) has no partner [<sup>F3</sup>and is not a lone parent], the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to 38 per cent. of the weekly rate of the basic pension for the time being specified in section 44(4) of the Contributions and Benefits Act;
- [<sup>F4</sup>(aa) is a lone parent, the applicable amount shall be an amount equal to the standard reduction, increased by such of the amounts specified in sub-paragraphs (b) to (e) of paragraph (1) as apply in his case;]
- (b) has a partner and either the claimant or his partner is a long term patient, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to 20 per cent. of the weekly rate of the basic pension for the time being specified in section 44(4) of the Contributions and Benefits Act (“the standard reduction”);
- (c) has a partner and both the claimant and his partner are long term patients, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to twice the sum of the standard reduction;
- (d) is a member of a polygamous marriage and one or more members of the marriage are long term patients, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to the standard reduction multiplied by the number of members who are long term patients.

(4) Any calculation made for the purposes of sub-paragraphs (2) and (3) shall be rounded to the nearest 5 pence, 2.5 pence being rounded to the next 5 pence above.

(5) In this regulation and Schedule 2A, “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(8).

(6) In Schedule 2A, “additional spouse” means a spouse of either party to the marriage who is additional to the other party to the marriage.

(7) For the purposes of calculating the period of 13 weeks referred to in paragraph (2), where a person has been maintained free of charge while undergoing medical or other treatment as an in-patient in a hospital or similar institution within the meaning of that paragraph for two or more distinct periods separated by one or more intervals each not exceeding 28 days,

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he shall be treated as having been so maintained for a period equal in duration to the total of those distinct periods.”.

(2) After Schedule 2 insert—

“SCHEDULE 2A

Regulation 16

APPLICABLE AMOUNTS FOR PERSONS WHO HAVE ATTAINED OR WHOSE PARTNER HAS ATTAINED THE QUALIFYING AGE FOR STATE PENSION CREDIT

PART I

*Personal Allowances*

1. The amount specified in column (2) below in respect of each person or couple specified in column (1) shall be the amount specified for the purposes of regulation 16—

<i>(1)</i> <i>Person, couple or polygamous marriage</i>	<i>(2)</i> <i>Amount</i>
(1) Single claimant—	
(a) aged under 65;	(a) £102.10;
(b) aged 65 or over.	(b) £116.90.
(2) Couple—	
(a) both members aged under 65;	(a) £155.80;
(b) one member or both members aged 65 or over.	(b) £175.00.
(3) If the claimant is a member of a polygamous marriage and none of the members of the marriage have attained the age of 65—	
(a) for the claimant and the other party to the marriage;	(a) £155.80;
(b) for each additional spouse who is a member of the same household as the claimant.	(b) £53.70.
(4) If the claimant is a member of a polygamous marriage and one or more members of the marriage are aged 65 or over—	
(a) for the claimant and the other party to the marriage;	(a) £175.00;
(b) for each additional spouse who is a member of the same household as the claimant.	(b) £58.10.

2.—(1) The amounts specified in column (2) below in respect of each person specified in column (1) shall, for the relevant period specified in column (1), be the amounts specified for the purposes of regulation 16(1)(b)—

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<i>(1)</i> <i>Child or young person</i>	<i>(2)</i> <i>Amount</i>
Person in respect of the period—	£38.50;
(a) beginning on that person’s date of birth and ending on the day preceding the first Monday in September following that person’s sixteenth birthday;	
(b) beginning on the first Monday in September following that person’s sixteenth birthday and ending on the day preceding that person’s nineteenth birthday.	£38.50.

(2) In column (1) of the Table above, “the first Monday in September” means the Monday which first occurs in the month of September in any year.

## PART II

### *Family Premium*

3.—(1) The amount for the purposes of regulation 16(1)(c) and (d) in respect of a family of which at least one member is a child or young person shall be £15.75.

(2) The amount specified in sub-paragraph (1) shall be increased by £10.45 where at least one child is under the age of one year and for the purposes of this sub-paragraph where that child’s first birthday does not fall on a Monday he shall be treated as under the age of one year until the first Monday after his first birthday.

## PART III

### *Premiums*

4. The premiums specified in Part IV shall, for the purposes of regulation 16(1)(e), be applicable to a claimant who satisfies the condition specified in this Part in respect of that premium.

5.—(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit for—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979(9) applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and
- (b) any period spent by a person in undertaking a course of training or instruction provided or approved by the Secretary of State under section 2 of the Employment and Training Act 1973(10), or by Scottish Enterprise or Highlands and Islands

(9) S.I. 1979/597.

(10) 1973 c. 50.

Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(11)</sup> or for any period during which he is in receipt of a training allowance.

(2) For the purposes of the carer premium under paragraph 9, a person shall be treated as being in receipt of a carer's allowance under section 70 of the Contributions and Benefits Act by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act.

### **Severe disability premium**

6.—(1) The condition is that the claimant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), a claimant shall be treated as being a severely disabled person if, and only if—

(a) in the case of a single claimant or a claimant who is treated as having no partner in consequence of sub-paragraph (3)—

(i) he is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act; and

(ii) subject to sub-paragraph (6), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing; and

(iii) no person is entitled to, and in receipt of, a carer's allowance in respect of caring for him;

(b) in the case of a claimant who has a partner—

(i) the claimant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act; and

(ii) his partner is also in receipt of such an allowance or, if the claimant is a member of a polygamous marriage [<sup>F5</sup>, each other member of that marriage is] in receipt of such an allowance; and

(iii) subject to sub-paragraph (6), the claimant has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing,

and either a person is entitled to and in receipt of a carer's allowance in respect of caring for only one of the couple or, if he is a member of a polygamous marriage, for one or more but not all the members of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any of the members of the marriage.

(3) Where a claimant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of sub-paragraph (4), that partner shall be treated for the purposes of sub-paragraph (2) as if he were not a partner of the claimant.

(4) For the purposes of sub-paragraph (3), a person is blind if he is registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948<sup>(12)</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a regional or islands council.

(11) 1990 c. 35.

(12) 1948 c. 29.

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(5) For the purposes of sub-paragraph (4), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(6) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii), no account shall be taken of—

- (a) a person receiving attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act; or
- (b) a person who is blind or is treated as blind within the meaning of sub-paragraphs (4) and (5).

(7) For the purposes of sub-paragraph (2)(b), a person shall be treated—

- (a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act, if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
- (b) as being entitled to and in receipt of a carer's allowance if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.

(8) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b)—

- (a) no account shall be taken of an award of a carer's allowance to the extent that payment of such an award is backdated for a period before the date on which the award is made; and
- (b) references to a person being in receipt of a carer's allowance shall include references to a person who would have been in receipt of that allowance but for the application of a restriction under section 7 of the Social Security Fraud Act 2001<sup>(13)</sup> (loss of benefit).

### **Enhanced disability premium**

7. The condition is that the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations under section 113(2) of the Contributions and Benefits Act or but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of the Contributions and Benefits Act in respect of a child or young person who is a member of the claimant's family.

### **Disabled child premium**

8. The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

- (a) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind within the meaning of paragraph 6(4) or is treated as blind in accordance with paragraph 6(5) <sup>F6</sup>; or
- (c) is a child or a young person in respect of whom section 145A of the Contributions and Benefits Act applies for the purposes of entitlement to child benefit, but only

(13) 2001 c. 11.



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for the period prescribed under that section, and in respect of whom a disabled child premium was included in the claimant’s applicable amount immediately before the death of that child.]

### **Carer premium**

**9.**—(1) The condition is that the claimant or his partner is, or both of them are, entitled to a carer’s allowance.

(2) Where a carer premium has been awarded but—

- (a) the person in respect of whose care the carer’s allowance has been awarded dies; or
- (b) the person in respect of whom the premium was awarded ceases to be entitled, or ceases to be treated as entitled, to a carer’s allowance,

this paragraph shall be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

(3) The relevant date for the purposes of sub-paragraph (2) is—

- (a) the Sunday following the death of the person in respect of whose care the carer’s allowance has been awarded (or beginning with the date of death if the date occurred on a Sunday);
- (b) where head (a) above does not apply, the date on which that person who was entitled to a carer’s allowance ceases to be entitled to it.

(4) For the purposes of this paragraph, a person shall be treated as being entitled to and in receipt of a carer’s allowance for any period not covered by an award but in respect of which a payment is made in lieu of an award.

### **Persons in receipt of concessionary payments**

**10.** For the purpose of determining whether a premium is applicable to a person under paragraphs 6 to 9, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

### **Person in receipt of benefit**

**11.** For the purposes of this Part of this Schedule, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.

## **PART IV**

### *Amounts of premiums specified in Part III*

<i>Premium</i>	<i>Amount</i>
<b>12.</b> —	(1)
(1) Severe disability premium—	
(a) where the claimant satisfies the condition in paragraph 6(2)(a);	(a) £42.95;
(b) where the claimant satisfies the condition in paragraph 6(2)(b)—	(b) (i) £42.95;

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Premium	Amount
(i) in a case where there is someone in receipt of a carer's allowance or if he or any partner satisfies that condition only by virtue of paragraph 6(7);	
(ii) in a case where there is no-one in receipt of such an allowance.	(ii) £85.90.
(2) Enhanced disability premium.	(2) £16.60 in respect of each child or young person in respect of whom the conditions specified in paragraph 7 are satisfied.
(3) Disabled child premium.	(3) £41.30 in respect of each child or young person in respect of whom the condition specified in paragraph 8 is satisfied.
(4) Carer premium.	(4) £25.10 in respect of each person who satisfies the condition specified in paragraph 9.”.

- F3** Words in [reg. 6\(1\)](#) inserted (5.10.2003) by [The Housing Benefit and Council Tax Benefit \(State Pension Credit and Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2275\)](#), regs. 1(1)(a), **2(4)(a)(i)**
- F4** Words in [reg. 6\(1\)](#) inserted (5.10.2003) by [The Housing Benefit and Council Tax Benefit \(State Pension Credit and Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2275\)](#), regs. 1(1)(a), **2(4)(a)(ii)**
- F5** Words in [reg. 6\(2\)](#) substituted (5.10.2003) by [The Housing Benefit and Council Tax Benefit \(State Pension Credit and Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2275\)](#), regs. 1(1)(a), **2(4)(b)(i)**
- F6** Words in [reg. 6\(2\)](#) inserted (5.10.2003) by [The Housing Benefit and Council Tax Benefit \(State Pension Credit and Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2275\)](#), regs. 1(1)(a), **2(4)(b)(ii)**

#### Commencement Information

- I6** [Reg. 6](#) in force at 6.10.2003, see [reg. 1\(1\)\(b\)](#)

#### Amendment of regulation 19

7. In regulation 19 (calculation of income and capital of members of claimant's family)—
- in paragraph (1), for the words “paragraph (2)”, substitute “paragraphs (2) and (4)”;
  - after paragraph (3), add the following paragraph—

“(4) The income and capital of a child or young person shall not be treated as the income and capital of the claimant if the claimant or his partner or, if he is a member of a polygamous marriage, any member of that marriage, has attained the qualifying age for state pension credit.”

#### Commencement Information

- I7** [Reg. 7](#) in force at 6.10.2003, see [reg. 1\(1\)\(b\)](#)

## **Income and capital**

8. For regulations 21 to 45, substitute—

### *“Chapter II: Income and Capital*

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

21. The income and capital of—

- (a) the claimant; and
- (b) any partner of the claimant,

shall be calculated in accordance with the rules set out in this Chapter; and any reference in this Part to the claimant shall apply equally to any partner of the claimant.

#### **Claimant in receipt of guarantee credit**

22. In the case of a claimant who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of his capital and income shall be disregarded.

#### **Calculation of claimant’s income in savings credit only cases**

23.—(1) In determining the income and capital of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, the relevant authority shall, subject to the following provisions of this regulation, use the calculation or estimate of the claimant’s or, as the case may be, the claimant’s partner’s income and capital made by the Secretary of State for the purpose of determining that award.

(2) The Secretary of State shall provide the relevant authority with details of the calculation or estimate—

- (a) if the claimant is on housing benefit or has claimed housing benefit, within the two working days following the day the calculation or estimate was determined, or as soon as reasonably practicable thereafter; or
- (b) if sub-paragraph (a) does not apply, within the two working days following the day he receives information from the relevant authority that the claimant or his partner has claimed housing benefit, or as soon as reasonably practicable thereafter.

(3) The details provided by the Secretary of State shall include the amount taken into account in that determination in respect of the net income of the person claiming state pension credit.

(4) The relevant authority shall modify the amount of the net income provided by the Secretary of State only in so far as necessary to take into account—

- (a) the amount of the savings credit payable;
- (b) in respect of any dependent children of the claimant, any of the following—
  - (i) payments of child benefit;
  - (ii) child tax credit;
  - (iii) childcare charges taken into account under regulation 26(1)(c);
  - <sup>F7</sup>(iv) . . . . .
- (c) the higher amount disregarded under these Regulations in respect of—
  - (i) lone parent’s earnings;

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- (ii) widowed mother's allowance;
  - (iii) widowed parent's allowance;
  - (iv) payments of maintenance, whether under a court order or not, which is made or due to be made by—
    - (aa) the claimant's former partner, or the claimant's partner's former partner; or
    - (bb) the parent of a child or young person where that child or young person is a member of the claimant's family except where that parent is the claimant or the claimant's partner; or
  - (v) the disregard of the 30 hour element of working tax credit referred to in regulation 20(1)(c) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(14);
  - (d) the income and capital of any partner of the claimant who is treated as a member of the claimant's household under regulation 15, to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
  - (e) regulation 20 (circumstances in which income of a non-dependant is to be treated as claimant's), if the relevant authority determines that this provision applies in the claimant's case;
  - (f) any modification under section 134(8) of the Administration Act (disregard of certain war pensions) which is applicable in the claimant's case.
- (5) Regulations 25 to 44 shall not apply to the amount of the net income to be taken into account by the local authority under paragraph (1), but shall apply (so far as relevant) for the purpose of determining any modifications which fall to be made to that amount under paragraph (4).
- (6) The relevant authority shall for the purpose of determining the claimant's entitlement of housing benefit use, except where paragraphs (7) and (8) apply, the calculation of the claimant's capital made by the Secretary of State, and shall in particular apply the provisions of regulation 38 if the claimant's capital is calculated as being in excess of £16,000.
- (7) If paragraph (8) applies, the relevant authority shall calculate the claimant's capital in accordance with regulations 38 to 44 below.
- (8) This paragraph applies if—
- (a) the Secretary of State notifies the relevant authority that the claimant's capital has been determined as being £16,000 or less;
  - (b) subsequent to that determination, the claimant's capital rises to more than £16,000; and
  - (c) the increase occurs whilst there is in force an assessed income period within the meaning of sections 6 and 9 of the State Pension Credit Act.

### **Persons who have attained the qualifying age for state pension credit**

**24.** In the case of a person who has attained or whose partner has attained the qualifying age for state pension credit and neither regulation 22 nor 23 applies in his case, his income and capital shall be calculated or estimated by the relevant authority in accordance with regulations 25 to 44 below.

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## Meaning of “income”

**25.**—(1) For the purposes of these Regulations, “income” means income of any of the following descriptions—

- (a) earnings;
- (b) working tax credit and child tax credit<sup>(15)</sup>;
- (c) retirement pension income within the meaning of the State Pension Credit Act<sup>(16)</sup>;
- (d) income from annuity contracts (other than retirement pension income);
- (e) a war disablement pension or war widow’s or widower’s pension;
- (f) a foreign war disablement pension or war widow’s or widower’s pension;
- (g) income from capital, other than capital disregarded under [<sup>F8</sup>Part I of] Schedule 5ZA;
- (h) social security benefits, other than retirement pension income or any of the following benefits—
  - (i) disability living allowance;
  - (ii) attendance allowance payable under section 64 of the Contributions and Benefits Act;
  - (iii) an increase of disablement pension under section 104 or 105 of that Act;
  - (iv) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part II of Schedule 8 to that Act<sup>(17)</sup>;
  - (v) an increase of an allowance payable in respect of constant attendance under paragraph 4 of Part I of Schedule 8 to that Act;
  - (vi) any guardian’s allowance payable under section 77 of that Act;
  - (vii) any increase for a dependant, other than the claimant’s partner, payable in accordance with Part IV of that Act;
  - (viii) any social fund payment made under Part VIII of that Act;
  - (ix) Christmas bonus payable under Part X of that Act;
  - (x) housing benefit;
  - (xi) council tax benefit;
  - (xii) bereavement payment<sup>(18)</sup>;
  - (xiii) statutory sick pay;
  - (xiv) statutory maternity pay;
  - (xv) statutory paternity pay payable under Part 12ZA of that Act<sup>(19)</sup>;
  - (xvi) statutory adoption pay payable under Part 12ZB of that Act<sup>(20)</sup>;
  - (xvii) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland;
- (i) all foreign social security benefits which are similar to the social security benefits prescribed above;

<sup>(15)</sup> See definitions inserted in regulation 2(1) by S.I. 2002/2402.

<sup>(16)</sup> See section 16(1) of the State Pension Credit Act 2002 (c. 16).

<sup>(17)</sup> See in particular paragraph 7(2)(b) of Schedule 8.

<sup>(18)</sup> Bereavement payment was introduced by section 54(1) of the Welfare Reform and Pensions Act 1999 (c. 30).

<sup>(19)</sup> Part 12ZA was inserted by section 2 of the Employment Act 2002 (c. 22).

<sup>(20)</sup> Part 12ZB was inserted by section 4 of the Employment Act 2002.

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- (j) any payment made under article 37 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(21);
  - (k) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria;
  - (l) payments under a scheme made under the Pneumoconiosis etc. (Worker's Compensation) Act 1979(22);
  - (m) payments made towards the maintenance of the claimant by his spouse or former spouse or towards the maintenance of the claimant's partner by his spouse or former spouse, including payments made—
    - (i) under a court order;
    - (ii) under an agreement for maintenance; or
    - (iii) voluntarily;
  - (n) payments due from any person in respect of board and lodging accommodation provided by the claimant;
  - (o) payments consisting of royalties or other sums received as a consideration for the use of, or the right to use, any copyright, patent or trade mark;
  - (p) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982(23);
  - (q) any payment, other than a payment ordered by a court or made in settlement of a claim, made by or on behalf of a former employer of a person on account of the early retirement of that person on grounds of ill-health or disability;<sup>F9</sup> ...
  - (r) any sum payable by way of pension out of money provided under the Civil List Act 1837(24), the Civil List Act 1937(25), the Civil List Act 1952(26), the Civil List Act 1972(27) or the Civil List Act 1975(28);
  - [<sup>F10</sup>(s) any income in lieu of that specified in sub-paragraphs (a) to (p); and
  - (t) any payment of rent made to a claimant who—
    - (i) owns the freehold or leasehold interest in any property or is a tenant of any property;
    - (ii) occupies part of the property; and
    - (iii) has an agreement with another person allowing that person to occupy that property on payment of rent.]
- (2) For the purposes of these Regulations, a claimant's capital, other than capital disregarded under Schedule 5ZA, shall be treated as if it were a weekly income—
- (a) in the case of a claimant residing permanently in accommodation to which paragraph (5) applies, of £1 for each £500 in excess of £10,000 and £1 for any excess which is not a complete £500;
  - (b) in any other case, of £1 for each £500 in excess of £6,000 and £1 for any excess which is not a complete £500.

(21) S.I. 1983/883.

(22) 1979 c. 41; amended by section 24 of the Social Security Act 1985 (c. 53).

(23) The Scheme is set out in the Appendix to S.I. 1982/719.

(24) 1837 c. 2.

(25) 1937 c. 32.

(26) 1952 c. 37.

(27) 1972 c. 7.

(28) 1975 c. 82.

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(3) Where the payment of any social security benefit prescribed under paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (4)) the amount to be taken into account under paragraph (1) shall be the amount before the deduction is made.

(4) The adjustments specified in this paragraph are those made in accordance with—

- (a) the Social Security (Overlapping Benefits) Regulations 1979(29);
- (b) the Social Security (Hospital In-Patients) Regulations 1975(30);
- (c) section 30DD or section 30E of the Contributions and Benefits Act(31) (reductions in incapacity benefit in respect of pensions and councillor's allowances).

(5) This paragraph applies to accommodation provided—

- (a) in a care home;
- (b) in an establishment run by the Abbeyfield Society (including all bodies corporate or incorporate which are affiliated to the Society);
- (c) under section 3 of, and Part II of the Schedule to, the Polish Resettlement Act 1947(32) (provision of accommodation) where the claimant requires personal care;
- (d) under sections 21 to 24 of the National Assistance Act 1948(33) (provision of accommodation), or, in Scotland, under section 13B or 59 of the Social Work (Scotland) Act 1968(34) or section 7 of the Mental Health (Scotland) Act 1984(35) (functions of local authorities) where—
  - (i) the home in which the accommodation is provided is either owned and managed or owned or managed by a local authority; and
  - (ii) the claimant occupies the accommodation other than on a temporary basis.

(6) For the purposes of paragraph (5), a person shall be treated as residing permanently in the accommodation—

- (a) except where sub-paragraph (b) applies, notwithstanding that he is absent from it for a period not exceeding 52 weeks;
- (b) if it is accommodation to which paragraph (5)(c) applies—
  - (i) notwithstanding that he is absent from it for a period not exceeding 13 weeks; and
  - (ii) if he, with the agreement of the manager of the home, intends to return to it in due course.

### Calculation of income on a weekly basis

26.—(1) Subject to regulation 29 (disregard of changes in tax, contributions etc.) and 69 and 70 (calculation of weekly amounts and rent free periods), for the purposes of section 130(1)(c) of the Contributions and Benefits Act (conditions for entitlement to housing benefit) the income of a claimant who has reached the qualifying age for state pension credit shall be calculated on a weekly basis—

(29) S.I. 1979/597.

(30) S.I. 1975/555.

(31) Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c. 30) and section 30E was inserted by section 3(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

(32) 1947 c. 19.

(33) 1948 c. 29; section 21 was amended by the National Health Service and Community Care Act 1990 (c. 19), section 42(1).

(34) 1968 c. 49.

(35) 1984 c. 36.

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- (a) by calculating or estimating the amount which is likely to be his average weekly income in accordance with this Chapter;
  - (b) by adding to that amount the weekly income calculated under regulation 25(2);
  - (c) by then deducting any relevant child care charges to which regulation 27 (treatment of child care charges) applies from any earnings which form part of the average weekly income or, in a case where the conditions in paragraph (2) are met, from those earnings plus whichever credit specified in sub-paragraph (b) of that paragraph is appropriate, up to a maximum deduction in respect of the claimant's family of whichever of the sums specified in paragraph (3) applies in his case.
- (2) The conditions of this paragraph are that—
- (a) the claimant's earnings which form part of his average weekly income are less than the lower of either his relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in his case; and
  - (b) that claimant or, if he is a member of a couple either the claimant or his partner, is in receipt of working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) above refers shall be—
- (a) where the claimant's family includes only one child in respect of whom relevant child care charges are paid, £94.50 per week;
  - (b) where the claimant's family includes more than one child in respect of whom relevant child care charges are paid, £140 per week.

### **Treatment of child care charges**

27.—(1) This regulation applies where a claimant is incurring relevant child care charges and—

- (a) is a lone parent and is engaged in remunerative work;
  - (b) is a member of a couple both of whom are engaged in remunerative work; or
  - (c) is a member of a couple where one member is engaged in remunerative work and the other member is incapacitated.
- (2) Relevant child care charges are those charges for care to which paragraphs (3) and (4) apply, and shall be estimated on a weekly basis in accordance with paragraph (7).
- (3) The charges are paid by the claimant for care which is provided—
- (a) in the case of any child of the claimant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday; or
  - (b) in the case of any child of the claimant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.
- (4) The charges are paid for care which is provided by one or more of the care providers listed in paragraph (5) and are not paid—
- (a) in respect of the child's compulsory education; or
  - (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 19 (circumstances in which a person is treated as responsible or not responsible for another).
- (5) The care to which paragraph (4) refers may be provided—



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- (a) by persons registered under section 71 of the Children Act 1989<sup>(36)</sup> (registration of child minders and persons providing day care for young children);
  - (b) out of school hours, by a school on school premises or by a local authority—
    - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday, or
    - (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
  - (c) by a child care scheme operating on Crown property where registration under section 71 of the Children Act 1989 is not required;
  - (d) in schools or establishments which are exempt from registration under section 71 of the Children Act 1989 by virtue of section 71(16) of, and paragraph 3 or 4 of Schedule 9 to, that Act;
  - (e) by a child care provider approved by an organisation accredited by the Secretary of State under the scheme established by the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>(37)</sup>;
  - (f) by persons registered under Part XA of the Children Act 1989<sup>(38)</sup>;
  - (g) in schools or establishments which are exempted from registration under Part XA of the Children Act 1989 by virtue of paragraph 1 or 2 of Schedule 9A to that Act<sup>(39)</sup>; or
  - (h) by—
    - (i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001<sup>(40)</sup>; or
    - (ii) local authorities registered under section 33(1) of that Act,where the care provided is childminding or day care of children<sup>(41)</sup> within the meaning of that Act.
- (6) In paragraphs (3) and (5)(b), “the first Monday in September” means the Monday which first occurs in the month of September in any year.
- (7) Relevant child care charges shall be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.
- (8) For the purposes of paragraph (1)(c), the other member of a couple is to be treated as incapacitated where—
- (a) he is aged not less than 80;
  - (b) he is aged less than 80 and—
    - (i) the additional conditions specified in paragraph 12 of Schedule 2 are treated as applying in his case; and
    - (ii) he satisfies those conditions or would satisfy them but for his being treated as capable of work by virtue of a determination made in accordance with

<sup>(36)</sup> 1989 c. 41.

<sup>(37)</sup> S.I. 1999/3110.

<sup>(38)</sup> 1989 c. 41; Part XA (comprising sections 79A to 79X) was inserted by section 79 of the Care Standards Act 2000(c. 14).

<sup>(39)</sup> Schedule 9A was inserted by Schedule 3 to the Care Standards Act 2000.

<sup>(40)</sup> 2001 asp 8.

<sup>(41)</sup> See section 2(20).

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regulations made under section 171E of the Contributions and Benefits Act<sup>(42)</sup>;

- (c) the claimant is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part XIIA of the Contributions and Benefits Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;
- (d) there is payable in respect of him one or more of the following—
  - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate specified in paragraph 2 of Part I of Schedule 4 to the Contributions and Benefits Act<sup>(43)</sup>;
  - (ii) attendance allowance under section 64 of that Act;
  - (iii) severe disablement allowance under section 68 of that Act;
  - (iv) disability living allowance under section 71 of that Act;
  - (v) increase of disablement pension under section 104 of that Act;
  - (vi) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v) above;
- (e) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (d) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient within the meaning of regulation 16(5) (patients);
- (f) sub-paragraph (c) or (d) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (g) he has an invalid carriage or other vehicle provided to him by the Secretary of State under section 5(2)(a) of, and Schedule 2 to, the National Health Service Act 1977<sup>(44)</sup> or under section 46 of the National Health Service (Scotland) Act 1978<sup>(45)</sup> or provided by the Department of Health and Social Services for Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(46)</sup>.

(9) For the purposes of paragraph (8), once paragraph (8)(c) applies to the claimant, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.

- (10) For the purposes of paragraphs (3) and (5)(b), a person is disabled if he is a person—
  - (a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;
  - (b) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948<sup>(47)</sup> (welfare services) or, in Scotland, has been certified as

<sup>(42)</sup> Section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c. 18).

<sup>(43)</sup> Paragraph 2 was amended by the Social Security (Incapacity for Work) Act 1994.

<sup>(44)</sup> 1977 c. 49.

<sup>(45)</sup> 1978 c. 29.

<sup>(46)</sup> S.I. 1972/1265 (N.I.14).

<sup>(47)</sup> 1948 c. 29.

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blind and in consequence he is registered as blind in a register maintained by or on behalf of a regional or islands council; or

- (c) who ceased to be registered as blind in such a register within the 28 weeks immediately preceding the date of claim.

(11) For the purposes of paragraph (1), a [<sup>F11</sup>person on maternity leave, paternity leave or adoption leave] shall be treated as if she is engaged in remunerative work for the period specified in paragraph (12) (“the relevant period”) provided that—

- (a) in the week before the period of maternity leave [<sup>F12</sup>, paternity leave or adoption leave] began she was in remunerative work;
- (b) the claimant incurred relevant child care charges within the meaning of paragraph (2) in that week; and
- (c) she is entitled to either statutory maternity pay under section 164 of the Contributions and Benefits Act [<sup>F13</sup>, statutory paternity pay by virtue of section 171ZA or 171ZB of that Act, statutory adoption pay by virtue of section 171ZL of that Act] or maternity allowance under section 35 of that Act.

(12) The relevant period shall begin on the day on which the [<sup>F14</sup>person’s maternity leave, paternity leave or adoption leave] commences and shall end on—

- (a) the date that leave ends;
- (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance [<sup>F15</sup>, statutory maternity pay, statutory paternity pay or statutory adoption pay] ends, the date that entitlement ends; or
- (c) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance [<sup>F15</sup>, statutory maternity pay, statutory paternity pay or statutory adoption pay] ends, the date that entitlement to that award of the child care element of working tax credit ends,

whichever shall occur first.

(13) In paragraph (12), “child care element” of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act 2002(48) (child care element).

(14) Where paragraph (11) applies to a [<sup>F16</sup>person on maternity leave, paternity leave or adoption leave], any child care charges in respect of the child to whom [<sup>F17</sup>such leave] relates shall not be treated as relevant child care charges for the purposes of this regulation and regulation 26.

### Calculation of weekly income

**28.**—(1) Except where paragraphs (2) and (4) apply, for the purposes of calculating the weekly income of the claimant, where the period in respect of which a payment is made—

- (a) does not exceed a week, the whole of that payment shall be included in the claimant’s weekly income;
- (b) exceeds a week, the amount to be included in the claimant’s weekly income shall be determined—
  - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;

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- (ii) in a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
  - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
  - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number of days in the period in respect of which it is made.
- (2) Where—
- (a) the claimant's regular pattern of work is such that he does not work the same hours every week; or
  - (b) the amount of the claimant's income fluctuates and has changed more than once, the weekly amount of that claimant's income shall be determined—
    - (i) if, in a case to which sub-paragraph (a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences); or
    - (ii) in any other case, on the basis of—
      - (aa) the last two payments if those payments are one month or more apart;
      - (bb) the last four payments if the last two payments are less than one month apart; or
      - (cc) calculating or estimating such other payments as may, in the particular circumstances of the case, enable the claimant's average weekly income to be determined more accurately.
- (3) For the purposes of paragraph (2)(b), the last payments are the last payments before the date the claim was made or treated as made or, if there is a subsequent supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000<sup>(49)</sup>, the last payments before the date of the supersession.
- (4) If a claimant is entitled to receive a payment to which paragraph (5) applies, the amount of that payment shall be treated as if made in respect of a period of a year.
- (5) This paragraph applies to—
- (a) royalties or other sums payable as a consideration for the use of, or the right to use, any copyright, patent or trade mark;
  - (b) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982<sup>(50)</sup>; and
  - (c) any payment which is made on an occasional basis.
- (6) The period under which any benefit under the benefit Acts is to be taken into account shall be the period in respect of which that benefit is payable.
- (7) Where payments are made in a currency other than Sterling, the value of the payment shall be determined by taking the Sterling equivalent on the date the payment is made.
- (8) The sums specified in Schedule 3A shall be disregarded in calculating—
- (a) the claimant's earnings; and

<sup>(49)</sup> 2000 c. 19.

<sup>(50)</sup> The Scheme is set out in the Appendix to S.I. 1982/719.

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- (b) any amount to which paragraph (5) applies if the claimant or his partner is the first owner of the copyright, patent or trade mark, or the author of the book registered under the Public Lending Right Scheme 1982.
- (9) Income specified in Schedule 4A is to be disregarded in the calculation of a claimant's income.
- (10) Schedule 5ZA shall have effect so that—
  - (a) the capital specified in Part I shall be disregarded for the purpose of determining a claimant's income; and
  - (b) the capital specified in Part II shall be disregarded for the purpose of determining a claimant's income under regulation 25(2).
- (11) In the case of any income taken into account for the purpose of calculating a person's income, there shall be disregarded any amount payable by way of tax.
- (12) An authority may modify this section so as to provide for disregarding, in determining a person's income (whether he is the occupier of a dwelling or any other person whose income falls to be aggregated with that of the occupier of a dwelling), the whole or any part of any war widow's or war widower's pension payable to that person.

#### **Disregard of changes in tax, contributions etc.**

**29.** In calculating the claimant's income, the appropriate authority may disregard any legislative change—

- (a) in the basic or other rates of income tax;
- (b) in the amount of any personal tax relief;
- (c) in the rates of social security contributions payable under the Contributions and Benefits Act or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of that Act (small earnings exception in relation to Class 2 contributions);
- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the Contributions and Benefits Act; and
- (e) in the maximum rate of child tax credit or working tax credit,

for a period not exceeding 30 benefit weeks beginning with the benefit week immediately following the date from which the change is effective.

#### *Employed earners*

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

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

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay;
- (e) any payment by way of a retainer;

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- (f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—
  - (i) travelling expenses incurred by the claimant between his home and place of employment;
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;
- (g) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part V of Schedule 3 to the Social Security (Contributions) Regulations 2001<sup>(51)</sup>;
- (h) statutory sick pay and statutory maternity pay payable by the employer under the Contributions and Benefits Act;
- (i) statutory paternity pay payable under [<sup>F18</sup>section 171ZA or 171ZB] of the Contributions and Benefits Act<sup>(52)</sup>;
- (j) statutory adoption pay payable under [<sup>F19</sup>section 171ZL] of the Contributions and Benefits Act<sup>(53)</sup>;
- (k) any sums payable under a contract of service—
  - (i) for incapacity for work due to sickness or injury; or
  - (ii) by reason of pregnancy or confinement.
- (2) Earnings shall not include—
  - (a) subject to paragraph (3), any payment in kind;
  - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - (c) any occupational pension;
  - (d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme<sup>(54)</sup>;
  - (e) any payment of compensation made pursuant to an award by an employment tribunal<sup>(55)</sup> established under the Employment Tribunals Act 1996<sup>(56)</sup> in respect of unfair dismissal or unlawful discrimination.
- (3) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1)(g).

### Calculation of net earnings of employed earners

**31.**—(1) For the purposes of regulation 26 (calculation of income on a weekly basis), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to regulation 28(5) and Schedule 3A, be his net earnings.

<sup>(51)</sup> S.I. 2001/1004.

<sup>(52)</sup> Part 12ZA was inserted by section 2 of the Employment Act 2002 (c. 22).

<sup>(53)</sup> Part 12ZB was inserted by section 4 of the Employment Act 2002.

<sup>(54)</sup> The Scheme is set out in regulation 4 of, and the Schedule to, the European Communities (Iron and Steel Employees Re-adaptation Benefits Scheme) (No. 2) Regulations 1996 (S.I. 1996/3182).

<sup>(55)</sup> Industrial tribunals were renamed employment tribunals under section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and, under the same section, the Industrial Tribunals Act 1996 may be cited as the Employment Tribunals Act 1996.

<sup>(56)</sup> 1996 c. 17.

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(2) For the purposes of paragraph (1), net earnings shall, except in relation to any payment to which regulation 28(5) refers, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax;
  - (ii) primary Class 1 contributions under the Contributions and Benefits Act;
- (b) one half of any sum paid by the claimant by way of a contribution towards an occupational pension scheme;
- (c) one half of the amount calculated in accordance with paragraph (4) in respect of any qualifying contribution payable by the claimant; and
- (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay [<sup>F20</sup>, statutory maternity pay, statutory paternity pay or statutory adoption pay], any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the Contributions and Benefits Act.

(3) In this regulation, “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.

(4) The amount in respect of any qualifying contribution shall be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying contribution shall be determined—

- (a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;
- (b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.

(5) Where the earnings of a claimant are determined under sub-paragraph (b) of paragraph (2) of regulation 28 (calculation of weekly income), his net earnings shall be calculated by taking into account those earnings over the assessment period, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and 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) <sup>F21</sup>... and 259 of the Income and Corporation Taxes Act 1988<sup>(57)</sup> (personal reliefs) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro-rata basis;
- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the Contributions and Benefits Act in respect of those earnings if such contributions were payable; and
- (c) one-half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

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(57) 1988 c. 1.

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## *Self-employed earners*

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

**32.**—(1) Where a claimant’s earnings consist of earnings from employment as a self-employed earner, the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

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

(2) For the purposes of determining the weekly amount of earnings of a claimant to whom paragraph (1)(b) applies, his earnings over the computation period shall be divided by the number equal to the number of days in that period and multiplying the quotient by 7.

(3) The period over which the weekly amount of a claimant’s earnings is calculated in accordance with this regulation shall be his assessment period.

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

**33.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance paid under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(58)</sup> to the claimant for the purpose of assisting him in carrying on his business unless at the date of claim the allowance has been terminated.

- (2) “Earnings” in the case of employment as a self-employed earner does not include—
- (a) where a claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation for which payment is made, those payments;
  - (b) any payment made by a local authority to a claimant—
    - (i) with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989<sup>(59)</sup> (provision of accommodation and maintenance for a child whom they are looking after) or, as the case may be, section 26(1) of the Children (Scotland) Act 1995<sup>(60)</sup>; or
    - (ii) with whom a local authority foster a child under the Fostering of Children (Scotland) Regulations 1996<sup>(61)</sup>;
  - (c) any payment made by a voluntary organisation in accordance with section 59(1) (a) of the Children Act 1989 (provision of accommodation by voluntary organisations);
  - (d) any payment made to the claimant or his partner for a person (“the person concerned”) who is not normally a member of the claimant’s household but is temporarily in his care, by—
    - (i) a health authority;
    - (ii) a local authority;

<sup>(58)</sup> 1990 c. 35.

<sup>(59)</sup> 1989 c. 41.

<sup>(60)</sup> 1995 c. 36.

<sup>(61)</sup> S.I. 1996/3263.



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- (iii) a voluntary organisation;
  - (iv) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948<sup>(62)</sup>; or
  - (v) a primary care trust established under section 16A of the National Health Service Act 1977<sup>(63)</sup>;
- (e) any sports award.

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

**34.**—(1) For the purposes of regulation 26 (calculation of income on a weekly basis), the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership, his share of the net profit derived from that employment, less—
  - (i) an amount in respect of income tax and of social security contributions payable under the Contributions and Benefits Act calculated in accordance with regulation 35 (deduction of tax and contributions for self-employed earners); and
  - (ii) one half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

(2) For the purposes of paragraph (1)(a), the net profit of the employment shall, except where paragraph (8) applies, be calculated by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (4) to (7), 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 Contributions and Benefits Act,

calculated in accordance with regulation 35 (deduction of tax and contributions for self-employed earners); and

- (c) one half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

(3) For the purposes of paragraph (1)(b), the net profit of the employment shall be calculated by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(4) Subject to paragraph (5), no deduction shall be made under paragraph (2)(a) or (3) in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;

<sup>(62)</sup> 1948 c. 29; section 26(3A) was inserted by the National Health Service and Community Care Act 1990 (c. 19).

<sup>(63)</sup> 1977 c. 49; section 16A was inserted by section 2 of the Health Act 1999 (c. 8).

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- (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; and
  - (f) any expenses incurred in providing business entertainment.
- (5) A deduction shall be made under paragraph (2)(a) or (3) in respect of the repayment of capital on any loan used for—
- (a) the replacement in the course of business of equipment or machinery; and
  - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (6) The relevant authority shall refuse to make a deduction in respect of any expenses under paragraph (2)(a) or (3) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.
- (7) For the avoidance of doubt—
- (a) a deduction shall not be made under paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the business;
  - (b) a deduction shall be made thereunder in respect of—
    - (i) the excess of any value added tax paid over value added tax received in the assessment period;
    - (ii) 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;
    - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (8) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be one third of the earnings of that employment, less—
- (a) an amount in respect of—
    - (i) income tax; and
    - (ii) social security contributions payable under the Contributions and Benefits Act,
 calculated in accordance with regulation 35 (deduction of tax and contributions for self-employed earners); and
  - (b) one half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.
- (9) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.
- (10) The amount in respect of any qualifying premium shall be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying premium shall be determined—
- (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365;
  - (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.

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(11) In this regulation, “qualifying premium” means any premium which is payable periodically in respect of a retirement annuity contract or a personal pension scheme and is so payable on or after the date of claim.

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

**35.**—(1) The amount to be deducted in respect of income tax under regulation 34(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) shall be calculated 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 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)<sup>F22</sup>... and 259 of the Income and Corporation Taxes Act 1988(**64**) (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal reliefs 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 34(1)(b)(i), (2)(b)(ii) or (8)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Contributions and Benefits Act at the rate applicable at the date of claim except where the claimant’s chargeable income is less than the amount specified in section 11(4) of the Contributions and Benefits Act (small earnings exception) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and
  - (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the Contributions and Benefits Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but if the assessment period is less than a year, those limits 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 (2)(a) or, as the case may be, (3) of regulation 34;
  - (b) in the case of employment as a child minder, one third of the earnings of that employment.

### *Other income*

### **Notional income**

**36.**—(1) A claimant who has attained or whose partner has attained the qualifying age for state pension credit shall be treated as possessing—

- (a) the amount of any retirement pension income—
  - (i) for which no claim has been made; and
  - (ii) to which he might expect to be entitled if a claim for it were made;

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(64) 1988 c. 1; sections 257 and 257A were substituted by the Finance Act 1988 (c. 39), section 33.

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(b) income from an occupational pension scheme which the claimant elected to defer.

(2) Where a person, aged not less than 60, is a person entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) he fails to purchase an annuity with the funds available in that scheme where—
  - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
  - (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
  - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(3) The amount of any income foregone in a case to which either head (i) or (ii) of paragraph (2)(a) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the relevant authority which shall take account of information provided by the pension fund holder in accordance with regulation 73(5) (evidence and information).

(4) The amount of any income foregone in a case to which either head (iii) of paragraph (2)(a) or paragraph (2)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant scheme or retirement annuity contract been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (3).

(5) In paragraph (2), “money purchase benefits” has the meaning it has in the Pension Schemes Act 1993<sup>(65)</sup>.

(6) A person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit.

(7) Where a claimant is in receipt of any benefit (other than housing benefit) under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the relevant authority shall treat the claimant as possessing such benefit at the altered rate—

- (a) in a case in which the claimant’s weekly amount of eligible rent falls to be calculated in accordance with regulation 69(2)(b) (calculation of weekly amounts), from 1st April in that year;
- (b) in any other case, from the first Monday in April in that year,

to the date on which the altered rate is to take effect.

### **Income paid to third parties**

**37.—**(1) Any payment of income, other than a payment specified in paragraph (2), to a third party in respect of the claimant shall be treated as possessed by the claimant.

<sup>(65)</sup> 1993 c. 48; see section 181(1) of that Act.

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(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where—

- (a) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980<sup>(66)</sup>;
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) the person referred to in sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

### *Capital*

#### **Capital limit**

**38.** For the purposes of section 134(1) of the Contributions and Benefits Act as it applies to housing benefit (no entitlement to benefit if capital exceeds a prescribed amount), the prescribed amount is £16,000.

#### **Calculation of capital**

**39.**—(1) For the purposes of Part VII of the Contributions and Benefits Act as it applies to housing benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part.

(2) There shall be disregarded from the calculation of the claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 5ZA.

(3) A claimant's capital shall be treated as including any payment made to him by way of arrears of—

- (a) child tax credit;
- (b) working tax credit;
- (c) state pension credit,

if the payment was made in respect of a period for the whole or part of which housing benefit was paid before those arrears were paid.

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

**40.** Capital which a claimant possesses in the United Kingdom shall be calculated—

- (a) except in a case to which sub-paragraph (b) applies, at its current market or surrender value less—
  - (i) where there would be expenses attributable to sale, 10 per cent.; and
  - (ii) the amount of any encumbrance secured on it;
- (b) in the case of a National Savings Certificate—
  - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date on which the claim is made or treated as made, or the

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date of any subsequent review, at the price which it would have realised on that 1st July, had it been purchased on the last day of that issue;

(ii) in any other case, at its purchase price.

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

**41.** Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—

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

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

### **Notional capital**

**42.—(1)** A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit except to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 43 (diminishing notional capital rule).

(2) Without prejudice to the generality of paragraph (1), a person who disposes of a capital resource shall be regarded as—

- (a) depriving himself of it if the disposal was by way of gift to a third party;
- (b) not depriving himself of it if the disposal was for the purpose of—
  - (i) reducing or paying a debt owed by the claimant; or
  - (ii) purchasing goods or services if the expenditure was reasonable in the circumstances of the claimant's case.

(3) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he shall be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 39 (calculation of capital), be disregarded; and
- (b) he shall, subject to paragraph (4), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(4) For so long as a claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (3) shall be disregarded.

(5) Where under this regulation a person is treated as possessing capital, the amount of that capital shall be calculated in accordance with the provisions of this Part as if it were actual capital which he does possess.

### **Diminishing notional capital rule**

**43.—(1)** Where a claimant is treated as possessing capital under regulation 42(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a week that is subsequent to—
  - (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied; or
  - (ii) a week which follows that relevant week and which satisfies those conditions,

shall be reduced by an amount determined under paragraph (3);

- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
  - (i) that week is a week subsequent to the relevant week; and
  - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied,

shall be reduced by the amount determined under paragraph (4).

(2) This paragraph applies to a benefit week where the claimant satisfies the conditions that—

- (a) he is in receipt of housing benefit; and
- (b) but for regulation 42(1), he would have received an additional amount of housing benefit in that week.

(3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to the aggregate of—

- (a) the additional amount to which paragraph (2)(b) refers;
- (b) where the claimant has also claimed state pension credit, the amount of any state pension credit or any additional amount of state pension credit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002<sup>(67)</sup> (notional capital);
- (c) where the claimant has also claimed council tax benefit, the amount of any council tax benefit or any additional amount of council tax benefit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 34(1) of the Council Tax Benefit (General) Regulations 1992<sup>(68)</sup> (notional capital);
- (d) where the claimant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations 1996<sup>(69)</sup> (notional capital).

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to housing benefit in the relevant week but for regulation 42(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

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<sup>(67)</sup> S.I. 2002/1792.

<sup>(68)</sup> S.I. 1992/1814.

<sup>(69)</sup> S.I. 1996/207.

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- (a) the amount of housing benefit to which the claimant would have been entitled in the relevant week but for regulation 42(1) and, for the purposes of this sub-paragraph, if the relevant week is a week to which regulation 69(5)(a) refers (calculation of weekly amounts), that amount shall be determined by dividing the amount of housing benefit to which he would have been so entitled by the number of days in that week for which he was liable to make payments in respect of the dwelling he occupies as his home and multiplying the quotient so obtained by 7;
  - (b) if the claimant would, but for regulation 21 of the State Pension Credit Regulations 2002, have been entitled to state pension credit in respect of the benefit week, within the meaning of regulation 1(2) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the state pension credit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
  - (c) if the claimant would, but for regulation 34(1) of the Council Tax Benefit (General) Regulations 1992, have been entitled to council tax benefit or to an additional amount of council tax benefit in respect of the benefit week which includes the last day of the relevant week, the amount which is equal to—
    - (i) in a case where no council tax benefit is payable, the amount to which he would have been entitled; or
    - (ii) in any other case, the amount equal to the additional amount of council tax benefit to which he would have been entitled;
 and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the council tax benefit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
  - (d) if the claimant would, but for regulation 113 of the Jobseeker’s Allowance Regulations 1996, have been entitled to an income-based jobseeker’s allowance in respect of the benefit week, within the meaning of regulation 1(3) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income-based jobseeker’s allowance to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.
- (5) The amount determined under paragraph (4) shall be re-determined under that paragraph if the claimant makes a further claim for housing benefit and the conditions in paragraph (6) are satisfied, and in such a case—
- (a) sub-paragraphs (a) to (d) of paragraph (4) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
  - (b) subject to paragraph (7), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.
- (6) The conditions are that—
- (a) a further claim is made 26 or more weeks after—
    - (i) the date on which the claimant made a claim for housing benefit in respect of which he was first treated as possessing the capital in question under regulation 42(1);



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- (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the date on which he last made a claim for housing benefit which resulted in the weekly amount being re-determined; or
  - (iii) the date on which he last ceased to be entitled to housing benefit, whichever last occurred; and
- (b) the claimant would have been entitled to housing benefit but for regulation 42(1).
- (7) The amount as re-determined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.
- (8) For the purposes of this regulation—
- (a) “part-week” in paragraph (4)(b) and (d) means—
    - (i) a period of less than a week which is the whole period for which state pension credit, or, as the case may be, an income-based jobseeker’s allowance, is payable; and
    - (ii) any other period of less than a week for which either of those benefits is payable;
  - (b) “part-week” in paragraph (4)(c) means a period of less than a week for which council tax benefit is allowed;
  - (c) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 42(1)—
    - (i) was first taken into account for the purpose of determining his entitlement to housing benefit; or
    - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to housing benefit on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, housing benefit;and where more than one benefit week is identified by reference to heads (i) and (ii) of this sub-paragraph, means the later or latest such benefit week;
  - (d) “relevant subsequent week” means the benefit week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

### Capital jointly held

44. Where a claimant and one or more other persons are beneficially entitled in possession to any capital asset, other than a capital asset disregarded under regulation 42(3), they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Chapter shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.”

**F7** Words in [reg. 8](#) omitted (5.10.2003) by virtue of [The Housing Benefit and Council Tax Benefit \(State Pension Credit and Miscellaneous Amendments\) Regulations 2003](#) (S.I. 2003/2275), regs. 1(1)(a), **2(5)(a)**

**F8** Words in [reg. 8](#) inserted (5.10.2003) by [The Housing Benefit and Council Tax Benefit \(State Pension Credit and Miscellaneous Amendments\) Regulations 2003](#) (S.I. 2003/2275), regs. 1(1)(a), **2(5)(b)(i)**

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- F9** Word in reg. 8 omitted (5.10.2003) by virtue of The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(b)(ii)**
- F10** Words in reg. 8 inserted (5.10.2003) by The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(b)(iii)**
- F11** Words in reg. 8 substituted (5.10.2003) by The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(c)(i)**
- F12** Words in reg. 8 inserted (5.10.2003) by The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(c)(ii)**
- F13** Words in reg. 8 inserted (5.10.2003) by The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(c)(iii)**
- F14** Words in reg. 8 substituted (5.10.2003) by The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(d)(i)**
- F15** Words in reg. 8 substituted (5.10.2003) by The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(d)(ii)**
- F16** Words in reg. 8 substituted (5.10.2003) by The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(e)(i)**
- F17** Words in reg. 8 substituted (5.10.2003) by The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(e)(ii)**
- F18** Words in reg. 8 substituted (5.10.2003) by The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(f)(i)**
- F19** Words in reg. 8 substituted (5.10.2003) by The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(f)(ii)**
- F20** Words in reg. 8 substituted (5.10.2003) by The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(g)**
- F21** Word in reg. 8 omitted (5.10.2003) by virtue of The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(h)**
- F22** Word in reg. 8 omitted (5.10.2003) by virtue of The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(5)(i)**

#### Commencement Information

- I8** Reg. 8 in force at 6.10.2003, see **reg. 1(1)(b)**

#### Provisions which do not apply

9. The following provisions of the Housing Benefit Regulations shall not apply to a claimant who has attained, or whose partner has attained, the qualifying age for state pension credit—

- (a) regulations 46 to 60 (students);
- (b) regulations 66 and 67 (benefit period).

### Commencement Information

**19** Reg. 9 in force at 6.10.2003, see [reg. 1\(1\)\(b\)](#)

## Continuing payments where state pension credit claimed

**10.** After regulation 62A(70), insert—

### “Continuing payments where state pension credit claimed

**62B.**—(1) This regulation applies where—

- (a) the claimant is entitled to housing benefit;
- (b) paragraph (2) is satisfied; and
- (c) either—
  - (i) the claimant has attained the qualifying age for state pension credit or, if his entitlement to income-based jobseeker’s allowance continued beyond that age, has attained the age of 65; or
  - (ii) the claimant’s partner has actually claimed state pension credit.

(2) This regulation is only satisfied if the Secretary of State has certified to the relevant authority that the claimant’s partner has actually claimed state pension credit or that—

- (a) the claimant’s award of—
  - (i) income support has terminated because the claimant has attained the qualifying age for state pension credit; or
  - (ii) income-based jobseeker’s allowance has terminated because the claimant has attained the qualifying age for state pension credit or the age of 65; and
- (b) the claimant has claimed or is treated as having claimed or is required to make a claim for state pension credit.

(3) In a case to which this regulation applies, housing benefit shall continue to be paid for the period of 4 weeks beginning on the day following the day the claimant’s entitlement to income support or, as the case may be, income-based jobseeker’s allowance, ceased, if and for so long as the claimant otherwise satisfies the conditions for entitlement to housing benefit.

(4) Throughout the period of 4 weeks specified in paragraph (3)—

- (a) the whole of the income and capital of the claimant shall be disregarded;
- (b) subject to paragraph (5), the appropriate maximum housing benefit of the claimant shall be that which was applicable in his case immediately before that period commenced.

(5) The appropriate maximum housing benefit shall be calculated in accordance with regulation 61(1) if, since the date it was last calculated—

- (a) the claimant’s rent has increased; or
- (b) a change in the deduction under regulation 63 falls to be made.”.

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**Commencement Information**

**I10** Reg. 10 in force at 6.10.2003, see **reg. 1(1)(b)**

PROSPECTIVE

**Amendment of regulation 63**

<sup>F23</sup>**11.** .....

**F23** Reg. 11 omitted (5.10.2003) by virtue of The Housing Benefit and Council Tax Benefit (State Pension Credit and Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2275), regs. 1(1)(a), **2(6)**

**Status:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 2 First Sch. words inserted by S.I. 2003/2634 reg. 4(3)(a)
- Sch. 2 First Sch. words inserted by S.I. 2003/2634 reg. 4(3)(b)(iv)
- Sch. 2 First Sch. words omitted by S.I. 2003/2634 reg. 4(3)(b)(i)
- Sch. 2 First Sch. words omitted by S.I. 2003/2634 reg. 4(3)(b)(iii)
- Sch. 2 First Sch. words substituted by S.I. 2003/2634 reg. 4(3)(b)(ii)
- Sch. 2 First Sch. words substituted by S.I. 2003/2634 reg. 4(3)(b)(iii)
- Sch. 2 Second Sch. words substituted by S.I. 2003/2634 reg. 4(4)