

## WELSH STATUTORY INSTRUMENTS

### 2015 No. 1844 (W. 272)

## SOCIAL CARE, WALES

### The Care and Support (Financial Assessment) (Wales) Regulations 2015

<i>Made</i>	- - - -	<i>27 October 2015</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>3 November 2015</i>
<i>Coming into force</i>	- -	<i>6 April 2016</i>

The Welsh Ministers, in exercise of the powers conferred by sections 50(1), 52(1), 53(3), 64(1), 65 and 196(2) of the Social Services and Well-being (Wales) Act 2014(1), make the following Regulations(2):

PROSPECTIVE

#### PART 1

#### General

##### **Title, commencement and application**

1.—(1) The title of these Regulations is the Care and Support (Financial Assessment) (Wales) Regulations 2015.

(2) These Regulations come into force on 6 April 2016.

(3) These Regulations apply in relation to Wales.

##### **Commencement Information**

**II** Reg. 1 in force at 6.4.2016, see [reg. 1\(2\)](#)

(1) [2014 anaw 4](#).

(2) See section 197(1) of the Social Services and Well-being (Wales) Act 2014 (“the Act”) for the definitions of “regulations” and “specified”.

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

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Care and Support (Financial Assessment) (Wales) Regulations 2015. 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*

## Interpretation

2.—(1) In these Regulations—

- “the Act” (“*y Ddeddf*”) means the Social Services and Well-being (Wales) Act 2014;
- “the 1992 Act” (“*Deddf 1992*”) means the Social Security Contributions and Benefits Act 1992(3);
- “the Charging Regulations” (“*y Rheoliadau Gosod Ffioedd*”) means the Care and Support (Charging) (Wales) Regulations 2015(4);
- “the Income Support Regulations” (“*y Rheoliadau Cymhorthdal Incwm*”) means the Income Support (General) Regulations 1987(5);
- “the Pension Credit Regulations” (“*y Rheoliadau Credyd Pensiwn*”) means the State Pension Credit Regulations 2002(6);
- “A” (“*A*”) means an adult—
  - (a) whose financial resources are to be assessed in accordance with regulation 6 or regulation 8, or
  - (b) who falls within the circumstances specified in regulation 7;
- “armed forces independence payment” (“*taliad annibyniaeth y lluoedd arfog*”) means armed forces independence payment under the Armed Forces and Reserved Forces (Compensation Scheme) Order 2011(7);
- “attendance allowance” (“*lwfans gweini*”) has the same meaning as in the Income Support Regulations;
- “child benefit” (“*budd-dal plant*”) means a child benefit under the 1992 Act;
- “child tax credit” (“*credyd treth plant*”) means a child tax credit under the Tax Credits Act 2002(8);
- “council tax” (“*treth gyngor*”) is to be construed in accordance with section 1(1) of the Local Government Finance Act 1992(9);
- “direct payment” (“*taliad uniongyrchol*”) has the meaning given in sections 50(7) and 52(7) of the Act;
- “disability living allowance” (“*lwfans byw i’r anabl*”) means a disability living allowance under the 1992 Act;
- “employed earner” (“*enillydd cyflogedig*”) is to be construed in accordance with section 2(1) (a) of the 1992 Act(10);
- “flat-rate charge” (“*ffi unffurf*”) means a fixed rate charge which is imposed by a local authority regardless of the means of the person who is liable to be charged for—
  - (a) care and support arranged or provided by a local authority under Part 4 of the Act (meeting needs); or
  - (b) services provided under section 15 (preventative services) or for assistance provided under section 17 (provision of information, advice and assistance) of the Act;

(3) 1992 c. 4.

(4) 2015/1843 (W. 271)

(5) S.I. 1987/1967.

(6) S.I. 2002/1792.

(7) S.I. 2011/517.

(8) 2002 c. 21.

(9) 1992 c. 14.

(10) Section 2(1)(a) was amended by paragraphs 169 and 171 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) and section 15(1) of the National Insurance Contributions Act 2014 (c. 7).

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“guardian’s allowance” (“*lwfans gwarcheidwad*”) means a guardian’s allowance under the 1992 Act;

“home visiting facility” (“*cyfleuster ymweld â’r cartref*”) means a visit (or visits) which are undertaken by an appropriate officer of a local authority to a person’s current place of residence, or at such other venue as the person reasonably requests, for the purposes of gathering information to inform a financial assessment for that person and for providing information and offering assistance in relation to that process;

“income support” (“*cymhorthdal incwm*”) means income support under the 1992 Act;

“lone parent” (“*unig riant*”) has the same meaning as in the Income Support Regulations;

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

“pension credit age” (“*oedran credyd pensiwn*”) means the qualifying age for state pension credit within the meaning of section 1(6) of the State Pension Credit Act 2002(11);

“permanent resident” (“*preswylydd parhaol*”) means a resident who is not a temporary resident or a short-term resident;

“personal independence payment” (“*taliad annibyniaeth bersonol*”) means a personal independence payment under Part 4 of the Welfare Reform Act 2012(12);

“personal pension scheme” (“*cynllun pensiwn personol*”) has the same meaning as in the Income Support Regulations;

“prospective resident” (“*darpar breswylydd*”) means a person for whom accommodation in a care home is proposed to be provided under the Act(13);

“reablement” (“*gofal a chymorth ailalluogi*”) means care and support—

- (a) provided or arranged by a local authority for A under Part 2 or 4 of the Act; or
- (b) secured or arranged by A, where A is or will be receiving direct payments made in accordance with section 50 or 52 of the Act; and
- (c) which—
  - (i) consists of a programme of care and support,
  - (ii) is for a specified(14) period of time (“the specified period”), and
  - (iii) has as its purpose the provision of assistance to A to enable A to maintain or regain the ability to live independently in A’s only or main home;

“resident” (“*preswylydd*”) means a person who is provided with accommodation in a care home under the Act;

“savings credit” (“*credyd cynilion*”) means a savings credit under the State Pension Credit Act 2002;

“self-employed earner” (“*enillydd hunangyflogedig*”) is to be construed in accordance with section 2(1)(b) of the 1992 Act;

“severe disablement occupational allowance” (“*lwfans galwedigaethol anabledd difrifol*”) means a severe disablement occupational allowance paid under article 10 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006(15) or under article 16 of the Personal Injuries (Civilians) Scheme 1983(16);

(11) 2002 c. 16.

(12) 2012 c. 5.

(13) See section 197(1) of the Act for the meaning of “care home”.

(14) A local authority will specify the duration of the period of reablement A requires based on A’s assessed needs.

(15) S.I. 2006/606; article 10 was amended by S.I. 2008/679 and 2013/630.

(16) S.I. 1983 / 686; article 16 was amended by S.I. 1984/1675 and 2001/420.

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“short-term resident” (“*preswylydd byrdymor*”) means a person who is provided with accommodation in a care home under the Act for a period not exceeding 8 weeks;

“standard amount” (“*swm safonol*”) means the amount which a person would be required to pay by virtue of section 50 or 52 of the Act towards securing the provision of care and support in respect of which direct payments are being considered or made if no financial assessment is carried out in accordance with these Regulations or determination as to A’s ability to pay an amount is undertaken in accordance with the Charging Regulations;

“temporary resident” (“*preswylydd dros dro*”) means a resident whose stay is—

- (a) unlikely to exceed 52 weeks; or
- (b) in exceptional circumstances, unlikely to substantially exceed that period;

“working day” (“*diwrnod gwaith*”) means any day other than—

- (a) a Saturday or a Sunday,
- (b) Christmas day or Good Friday, or
- (c) a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971<sup>(17)</sup>;

“working tax credit” (“*credyd treth gwaith*”) means a working tax credit under the Tax Credits Act 2002.

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

(3) In these Regulations any reference to a resident’s accommodation in a care home, or to accommodation provided for a resident in a care home, is to be construed in the case of a resident who is a prospective resident as a reference to accommodation to be provided for that resident under section 35, 36, 40 or 45 of the Act, or where the prospective resident is in receipt of direct payments, as a reference to accommodation which will be secured by virtue of sections 50 or 52 of the Act.

(4) In these Regulations references to provision of or securing of care and support are, in the case of carer, to be read as meaning the provision or securing of support.

#### **Commencement Information**

**I2** Reg. 2 in force at 6.4.2016, see [reg. 1\(2\)](#)

## **PART 2**

### **Assessment of financial resources**

#### **Information to be provided by local authority**

**3.** Before a local authority carries out a financial assessment in accordance with these Regulations it must give A the following—

- (a) details of care and support to meet A’s needs which are offered or being provided for A and in respect of which it thinks it would impose a charge under section 59 of the Act;

<sup>(17)</sup> 1971 c. 80.

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- (b) details of the care and support that A has been assessed as requiring and for which direct payments(18) are being considered or made in accordance with section 50 or 52 of the Act;
- (c) where paragraph (a) applies, details of its charging policy for the provision of care and support, including—
  - (i) which elements, if any, are subject to a charge,
  - (ii) the standard charge(19) which may be imposed in relation to any of them,
  - (iii) any care and support, assistance or service for which a flat-rate charge is imposed,
  - (iv) the maximum weekly charge(20) that may be imposed or the maximum weekly charge that the local authority applies, where that charge is lower;
- (d) where paragraph (b) applies, details of its direct payments policy, which must include the following—
  - (i) details of the care and support, if any, for which direct payments may be, or are being provided, in respect of which A may be required to pay towards the cost of securing,
  - (ii) details of the standard amount which A may be required to pay towards the cost of securing such care and support,
  - (iii) any care and support, assistance or service for which a flat-rate charge is imposed,
  - (iv) the amount of the maximum weekly contribution or reimbursement(21) that may be imposed or the amount of the maximum weekly contribution or reimbursement that the local authority applies, where that amount is lower;
- (e) details of its financial assessment process;
- (f) details of the information and any documents that A is required to provide to the local authority for the purposes of the financial assessment, and the time limit, and format for providing them;
- (g) information about the consequences of failing to provide the information and documents within the time limit and in an appropriate format;
- (h) information about the consequences of not providing the information or documents required for the purposes of the assessment or of refusing to allow the local authority to carry out a financial assessment;
- (i) information about the statement of determination of A’s ability to pay a charge for, or to pay towards the cost of securing, A’s care and support that the local authority will provide following the completion of the financial assessment process(22);
- (j) details of the capital limit specified in regulation 11 or regulation 26 of the Charging Regulations and information about the consequences of(23) A being assessed as having capital in excess of that limit;

(18) “Direct payment” is defined in section 50(7) and 52(7) of the Act.

(19) “Standard charge” is defined in section 63(3) of the Act as meaning “...the amount that a local authority would charge under section 59 if no determination were made under section 66 as to a person’s ability to pay that amount”. Section 59(2) of the Act (power to impose charges) provides that a charge imposed under subsection (1) may cover only the reasonable cost that the local authority incurs in meeting the needs to which the charge applies.

(20) “The maximum weekly charge” is specified in regulation 7 of the Charging Regulations and applies in relation to the provision of care and support to meet an assessed need otherwise than by the provision of accommodation in a care home.

(21) “The maximum weekly contribution or reimbursement” and the basis upon which a local authority may calculate it are specified in regulation 22 of the Charging Regulations and applies in relation to the making of direct payments to secure the provision of care and support to meet an assessed need otherwise than by the provision of accommodation in a care home.

(22) A local authority is required to provide a statement of determination in regulation 14 (statement of determination) or regulation 29 (statement of determination – direct payments) of the Charging Regulations.

(23) Regulation 2 of the Charging Regulations defines the “capital limit”. The capital limit is the maximum amount of capital which a person may have, above which that person will be required to pay the standard charge or standard amount in full.

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- (k) details of any home visiting facility that the local authority provides within its area;
- (l) the names of an individual or individuals within the authority who may be contacted if A requires additional information or assistance in respect of the financial assessment process; and
- (m) information about A's right to appoint a third party to assist, or to act on A's behalf, in respect of all or part of the financial assessment process and the contact details of any organisation in its area which provides this type of support or assistance.

#### Commencement Information

**I3** Reg. 3 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Time limits

4.—(1) Subject to paragraph (2), a local authority must allow A 15 working days, or such longer time limit as it thinks reasonable, to provide the information and documents described in regulation 3(f).

(2) If A makes a reasonable request for an extension of the time limit specified in paragraph (1), giving reasons why the extension is required, a local authority must agree to the request and advise A of the period of the extension.

(3) If a local authority refuses a request for an extension of the time limit, it must inform A of its refusal and it must give reasons for its refusal.

#### Commencement Information

**I4** Reg. 4 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Format

5.—(1) The information provided by a local authority in accordance with regulation 3 may be in electronic or paper format, and must be in a format that is appropriate to A's communication needs.

(2) The information and documents to be provided by A under regulation 3(f) must be in electronic or paper format or such other format that the local authority has agreed to accept.

#### Commencement Information

**I5** Reg. 5 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Duty to carry out a financial assessment

6.—(1) Where a local authority thinks—

- (a) it would impose a charge under section 59 of the Act (power to impose a charge), were it to meet A's needs for care and support;

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- (b) that if it were to make payments towards meeting the cost of A's needs for care and support by making direct payments by virtue of section 50 or 52 of the Act(24), it would require A to pay by way of reimbursement(25) (in the case of a gross payment) or contribution (in the case of a net payment) towards the costs of securing the provision of that care and support,

it must carry out an assessment of A's financial resources in accordance with these Regulations.

(2) The duty in paragraph (1) does not apply where A falls within any of the circumstances specified in regulation 7.

#### Commencement Information

**I6** Reg. 6 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Circumstances in which there is no duty to carry out a financial assessment

7.—(1) A local authority is under no duty to carry out an assessment of A's financial resources in circumstances, where A—

- (a) has been assessed as needing or is receiving care and support, assistance or a service or any combination of the same for which the local authority applies a flat-rate charge;
- (b) declines to undergo a financial assessment;
- (c) fails to provide the local authority with the information or documents required by the authority in accordance with regulation 3(f) within a reasonable time or at all;
- (d) is suffering from any form of Creutzfeldt-Jakob disease, where that disease has been diagnosed by a registered medical practitioner;
- (e) has been offered or is receiving care and support, advice or a service, or has been offered or provided with direct payments to secure the provision of care and support as part of a package of after-care services in accordance with section 117 of the Mental Health Act 1983 (after-care)(26);
- (f) has been offered or is receiving reablement for the first 6 weeks of the specified period or, if the specified period is less than 6 weeks, for that period;
- (g) has been assessed as needing, or is receiving, only advocacy services(27).

(2) Where paragraph (1)(c) applies, a local authority may, if it considers that it has sufficient information, make an assessment of A's financial resources on the basis of the partial information or partial document (or both) that is in its possession.

#### Commencement Information

**I7** Reg. 7 in force at 6.4.2016, see [reg. 1\(2\)](#)

(24) Section 53(3) of the Act (direct payments: further provision) provides that regulations made in accordance with sections 50, 51, or 52 of the Act may make provision in relation to direct payments which corresponds to the provision which is made, or may be made, under sections 59 to 67 or section 73 of the Act.

(25) "Reimbursement", "gross payment", "contribution" and "net payment" are defined in section 53(2) of the Act.

(26) 1983 c. 20.

(27) "Advocacy services" is defined in section 181(2) of the Act as "...services which provide assistance (by way of representation or otherwise) to persons for purposes relating to their care and support".

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### Power to carry out a financial assessment

8. A local authority may carry out a new assessment of A's financial resources in accordance with these Regulations if any of the circumstances specified in regulation 15 (revised determination) or regulation 30 (revised determination) of the Charging Regulations apply in A's case.

#### Commencement Information

**I8** Reg. 8 in force at 6.4.2016, see [reg. 1\(2\)](#)

### Financial assessment process

9.—(1) Where a local authority carries out a financial assessment in accordance with regulation 6 (duty to carry out a financial assessment) or regulation 8 (power to carry out a financial assessment), it must ensure that the process of assessment that it employs gives effect to the requirements of this regulation.

(2) Where a local authority is meeting or proposing to meet A's needs for care and support, or where it is making, or is proposing to make, direct payments towards the cost of securing the provision of care and support to meet A's needs otherwise than by the provision of accommodation in a care home, it must—

- (a) calculate A's capital in accordance with the provisions of Part 4;
- (b) disregard the value of A's only or main home from that calculation.

(3) Where a local authority is meeting or proposing to meet A's needs for care and support, or where it is making, or is proposing to make, direct payments towards the cost of securing care and support to meet A's needs by the provision of accommodation in a care home, it must calculate A's capital in accordance with the provisions of Part 4.

(4) The provision made in paragraphs (2) and (3) does not affect the discretion of a local authority to apply criteria that are more generous to A than the provision made by these Regulations.

#### Commencement Information

**I9** Reg. 9 in force at 6.4.2016, see [reg. 1\(2\)](#)

### Duty of local authority to carry out a financial assessment of a short-term resident as if the resident is receiving care and support otherwise than the provision of accommodation in a care home

10. Where A is a short-term resident, a local authority must carry out an assessment of A's financial resources as if A is receiving care and support, or is receiving direct payments to secure the provision of care and support, other than by the provision of accommodation in a care home.

#### Commencement Information

**I10** Reg. 10 in force at 6.4.2016, see [reg. 1\(2\)](#)



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## Saving

11.—(1) Where, immediately before the coming into force of these Regulations an assessment of A's financial resources has effect, such assessment will continue to have effect notwithstanding that it was not made in accordance with the Act and these Regulations.

(2) An assessment referred to in paragraph (1) will continue to have effect until replaced by an assessment of A's financial resources carried out in accordance with the Act and these Regulations.

### Commencement Information

I11 Reg. 11 in force at 6.4.2016, see [reg. 1\(2\)](#)

## Rounding of fractions

12. Where any assessment of A's financial resources results in a fraction of a penny, that fraction is, if it would be to A's advantage, to be treated as a penny, otherwise it is to be disregarded.

### Commencement Information

I12 Reg. 12 in force at 6.4.2016, see [reg. 1\(2\)](#)

## PART 3

### Treatment and calculation of income

#### Calculation of income

13.—(1) A's income is to be calculated on a weekly basis by determining, in accordance with this Part, the weekly amount of A's total income.

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

### Commencement Information

I13 Reg. 13 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Earnings to be disregarded

14.—(1) Earnings derived from employment as an employed earner or a self-employed earner are to be disregarded in the calculation of A's income for the purposes of the financial assessment.

(2) For the purposes of this regulation—

(a) earnings in relation to an employed earner has the same meaning—

(i) as in regulation 35 of the Housing Benefit Regulations 2006<sup>(28)</sup>;

(28) S.I. 2006/213. Regulation 35 was amended by S.I. 2007/2618, 2009/2655, 2014/591 and 3255.

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- (ii) where the earner has attained the qualifying age for state pension credit, as in regulation 35 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (earnings of employed earners)<sup>(29)</sup>; and
- (b) earnings in relation to a self-employed earner has the same meaning as in regulation 37 of the Income Support Regulations (earnings of self-employed earners).

#### Commencement Information

I14 Reg. 14 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Other sums to be disregarded

15. There is to be disregarded in the calculation of A's total income for the purposes of the financial assessment any sum, where applicable, specified in Part 1 of Schedule 1, in accordance with Part 2 of that Schedule.

#### Commencement Information

I15 Reg. 15 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Capital treated as income

16.—(1) Any capital payable to A by instalments which are outstanding on the date on which A first becomes liable to pay for (or where A is or will be receiving direct payments, contribute or make reimbursements towards the cost of securing the provision of) the care and support, is to be treated as income if the aggregate of the instalments outstanding and the amount of A's capital calculated in accordance with Part 4 exceeds the amount specified in regulation 41(1) of the Income Support Regulations (capital treated as income).

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

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

(4) Subject to paragraph (5), A is to be treated as possessing any capital paid or due to be paid to a local authority by a third party pursuant to an agreement between the local authority and the third party made in connection with A's liability to pay, contribute or make reimbursements to the local authority towards the cost of accommodation provided or secured for A under the Act.

(5) A is not to be treated as possessing any voluntary payment of capital made by a third party to a local authority for the purpose of discharging any arrears of the payments, contributions or reimbursements required by the local authority from A for accommodation provided or secured under the Act.

(6) Where an agreement or court order provides that payments are to be made to A in consequence of any personal injury to A and that such payments are to be made wholly or partly by way of periodical payments, any such periodical payments received by A, to the extent that they are not a payment of income, are to be treated as income.

#### Commencement Information

I16 Reg. 16 in force at 6.4.2016, see [reg. 1\(2\)](#)

(29) [S.I. 2006/214](#). Regulation 35 was amended by [S.I. 2009 / 2655](#), [2012/757](#), [2014/591](#) and [3255](#).

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### Notional income

17.—(1) A is to be treated as possessing income which A has deprived himself or herself for the purpose of decreasing the amount A is or may be liable to pay towards the cost of meeting or securing the provision of care and support to meet A's needs.

(2) A is to be treated as possessing any income which would be treated as income possessed by a claimant of income support under regulation 42(2) to (4A) of the Income Support Regulations (notional income).

(3) Subject to paragraph (4), A is to be treated as possessing any income paid or due to be paid to a local authority by a third party pursuant to an agreement between the local authority and the third party made in connection with A's liability to pay, contribute, or make reimbursements to the local authority towards the cost of accommodation provided or secured for A under the Act.

(4) A is not to be treated as possessing any voluntary payment of income made by a third party to a local authority for the purpose of discharging any arrears of the payments, contributions or reimbursements required by the authority from A for accommodation provided or secured in accordance with the Act.

#### Commencement Information

I17 Reg. 17 in force at 6.4.2016, see [reg. 1\(2\)](#)

## PART 4

### Treatment and calculation of capital

#### Calculation of capital

18.—(1) The capital of A to be taken into account in a financial assessment is, subject to paragraph (2), to be the whole of A's capital calculated in accordance with this Part and any income treated as capital under regulation 19.

(2) Any capital, where applicable, specified in Schedule 2 is to be disregarded in the calculation of the person's capital under paragraph (1).

#### Commencement Information

I18 Reg. 18 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Income treated as capital

19.—(1) Any amount by way of refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E to the Income and Corporation Taxes Act 1998<sup>(30)</sup> is to be treated as capital.

(2) Any holiday pay which is not earnings is to be treated as capital.

(3) Except income derived from capital disregarded under paragraphs 1, 4, 8, 14, 22 and 24 of Schedule 2, any income of A which is derived from capital is to be treated as capital but only on the date on which it is normally due to be paid to A.

(30) 1998 c. 1.

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(4) Where A is an employed earner, any advance of earnings or any loan made by A's employer is to be treated as capital.

(5) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than one made under the Fund, the Eileen Trust, the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust the Independent Living Fund, or the Welsh Independent Living Scheme<sup>(31)</sup>, is to be treated as capital.

(6) Any voluntary payment of income made by a third party to A for the purpose of helping A to discharge any arrears of the payments, contributions, or reimbursements required by the local authority from the person for accommodation provided or secured in accordance with the Act is to be treated as the capital of A.

(7) In this regulation, "the Fund", "the Eileen Trust", "the Macfarlane Trust", "the Macfarlane (Special Payments) Trust", "the Macfarlane (Special Payments) (No. 2) Trust" and "the Independent Living Fund" have the same meaning as in the Income Support Regulations.

#### Commencement Information

**I19** Reg. 19 in force at 6.4.2016, see [reg. 1\(2\)](#)

### Calculation of capital in the United Kingdom

**20.** Capital which A possesses in the United Kingdom is to be calculated at its current market or surrender value (whichever is the higher), less—

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

#### Commencement Information

**I20** Reg. 20 in force at 6.4.2016, see [reg. 1\(2\)](#)

### Calculation of capital outside the United Kingdom

**21.** Capital which A possesses outside the United Kingdom is to be calculated in accordance with the method set out in regulation 50 of the Income Support Regulations (calculation of capital outside the United Kingdom).

#### Commencement Information

**I21** Reg. 21 in force at 6.4.2016, see [reg. 1\(2\)](#)

### Notional capital

**22.—(1)** A is to be treated as possessing capital of which A has deprived themselves for the purpose of decreasing the amount that they may be liable to pay, reimburse or contribute towards the cost of the care and support to meet their needs, except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of A;

<sup>(31)</sup> The former recipients of payments from the Independent Living Fund (which has now closed) will receive payments from the Welsh Independent Living Scheme with effect from July 2015.

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

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- (b) to the extent that the capital which A is treated as possessing is reduced in accordance with regulation 23 (diminishing notional capital rule); or
- (c) any sum to which paragraph 44(1) or 45(a) of Schedule 10 to the Income Support Regulations (disregard of compensation for personal injuries or death, administered by the Court) refers.

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

(3) For the purposes of paragraph (2), regulation 51(2)(c) of the Income Support Regulations applies as if for the reference to Schedule 10 to the Income Support Regulations there were substituted a reference to Schedule 2 (calculation of capital).

(4) Where A is treated as possessing capital under paragraph (1) or (2), the provisions of this Part apply for the purposes of calculating its amount as if it were actual capital A does possess.

**Commencement Information**

**I22** Reg. 22 in force at 6.4.2016, see [reg. 1\(2\)](#)

**Diminishing notional capital rule**

**23.**—(1) Where A is treated as possessing capital under regulation 22 (“notional capital”), for each week or part of a week that the local authority has determined that A is liable to pay, contribute or make reimbursements towards the cost of their care and support, at a higher rate than that at which A would have been assessed as liable to pay, contribute, or make reimbursements if A had had no notional capital, the amount of A’s notional capital is to be reduced by the method set out in paragraph (2).

(2) The local authority must reduce the amount of A’s notional capital by the difference between—

- (a) the higher rate referred to in paragraph (1); and
- (b) the rate at which A would have been assessed as liable to pay, contribute, or make reimbursements towards the cost of that care and support for that week or part of a week if A had been assessed as possessing no notional capital.

**Commencement Information**

**I23** Reg. 23 in force at 6.4.2016, see [reg. 1\(2\)](#)

**Capital jointly held**

**24.**—(1) Where A and one or more other persons are beneficially entitled in possession to any capital asset except an interest in land—

- (a) unless paragraph (2) applies, each person is to be treated as if each of them were entitled in possession to an equal share of the whole beneficial interest; and
- (b) that asset is to be treated as if it were actual capital.

(2) This paragraph applies where the local authority is satisfied that A is beneficially entitled in possession to a share which is less than or, as the case may be, more than an equal share of the whole beneficial estate.

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(3) Where paragraph (2) applies A's share of the whole beneficial interest will be the actual share (as determined by the local authority) and is to be treated as if it were actual capital.

**Commencement Information**

**I24** Reg. 24 in force at 6.4.2016, see [reg. 1\(2\)](#)

27 October 2015

*Mark Drakeford*  
Minister for Health and Social Services, one of  
the Welsh Ministers

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PROSPECTIVE

## SCHEDULE 1

Regulation 15

### Sums to be disregarded in the calculation of income

## PART 1

### Sums to be disregarded

1. Any amount paid by way of tax on income which is taken into account under regulation 13 (calculation of income).

#### Commencement Information

I25 Sch. 1 para. 1 in force at 6.4.2016, see [reg. 1\(2\)](#)

2.—(1) Subject to sub-paragraph (2), where A has needs for care and support other than the provision of accommodation in a care home, or where A is a temporary resident, any housing-related costs which A is liable to meet in respect of A's main or only home.

(2) Sub-paragraph (1) does not apply to the extent that the housing-related costs which A is liable to meet are a payment, contribution, or reimbursement or an amount which is disregarded under paragraph 3.

(3) In this paragraph, "housing-related costs" ("*costau cysylltiedig â thai*") means any mortgage repayments, payments of rent or ground rent, council tax or service charges, (other than services charges which are ineligible under Schedule 1 to the Housing Benefit Regulations 2006 (ineligible charges)).

#### Commencement Information

I26 Sch. 1 para. 2 in force at 6.4.2016, see [reg. 1\(2\)](#)

3.—(1) Any payment which would be disregarded under paragraph 5 of Schedule 9 to the Income Support Regulations (housing benefit).

(2) Any payment of income support towards housing costs determined in accordance with Schedule 3 to the Income Support Regulations (housing costs) or any amount that the local authority considers would be determined as a payment towards housing costs if A were in receipt of income support.

(3) Any payment which would be disregarded under paragraph 46 of Schedule 9 to the Income Support Regulations (reduction of liability for council tax).

#### Commencement Information

I27 Sch. 1 para. 3 in force at 6.4.2016, see [reg. 1\(2\)](#)

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4. Any direct payments received by or on behalf of A in accordance with sections 50 or 52 of the Act.

**Commencement Information**

I28 Sch. 1 para. 4 in force at 6.4.2016, see [reg. 1\(2\)](#)

5. Any payment in respect of any expenses incurred by A, where A is—
- (a) engaged by a charitable or voluntary body; or
  - (b) a volunteer,

if A derives no remuneration or profit from the employment.

**Commencement Information**

I29 Sch. 1 para. 5 in force at 6.4.2016, see [reg. 1\(2\)](#)

6. Any payment which would be disregarded under paragraph 3 or 4A of Schedule 9 to the Income Support Regulations (employed earner expenses and statutory sick pay in Northern Ireland).

**Commencement Information**

I30 Sch. 1 para. 6 in force at 6.4.2016, see [reg. 1\(2\)](#)

7. The mobility component of any disability living allowance or the mobility component of personal independence payment.

**Commencement Information**

I31 Sch. 1 para. 7 in force at 6.4.2016, see [reg. 1\(2\)](#)

8. Any armed forces independence payment.

**Commencement Information**

I32 Sch. 1 para. 8 in force at 6.4.2016, see [reg. 1\(2\)](#)

9. Any payment which would be disregarded under paragraph 8 of Schedule 9 to the Income Support Regulations (mobility supplement).

**Commencement Information**

I33 Sch. 1 para. 9 in force at 6.4.2016, see [reg. 1\(2\)](#)

10. If A is a temporary resident—
- (a) any attendance allowance;
  - (b) the care component of any disability living allowance; or
  - (c) the daily living component of any personal independence payment.



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**Commencement Information**

**I34** Sch. 1 para. 10 in force at 6.4.2016, see [reg. 1\(2\)](#)

11. Any concessionary payment made to compensate for the non-payment of—
- (a) any payment specified in paragraph 7 or 10; or
  - (b) any income support.

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**Commencement Information**

**I35** Sch. 1 para. 11 in force at 6.4.2016, see [reg. 1\(2\)](#)

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

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**Commencement Information**

**I36** Sch. 1 para. 12 in force at 6.4.2016, see [reg. 1\(2\)](#)

13. Any amount which would be disregarded under paragraph 13 of Schedule 9 to the Income Support Regulations (participants in training schemes).

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**Commencement Information**

**I37** Sch. 1 para. 13 in force at 6.4.2016, see [reg. 1\(2\)](#)

14.—(1) Except where sub-paragraph (2) applies, and subject to paragraphs 45 and 46, any relevant payment made or due to be made at regular intervals other than any payment which is to be disregarded under paragraph 30.

(2) Subject to paragraph 46, any relevant payment made or due to be made at regular intervals which is intended and used for any item which was not taken into account when assessing the reasonable cost of meeting or securing A's need for care and support.

(3) In this paragraph, “relevant payment” (“*taliad perthnasol*”) means—

- (a) a charitable payment;
- (b) a voluntary payment;
- (c) a payment (not falling within paragraph (a) or (b)) from a trust whose funds are derived from a payment made in consequence of any personal injury to A;
- (d) a payment under an annuity purchased—
  - (i) pursuant to any agreement or court order to make payments to A; or
  - (ii) from funds derived from a payment made, in consequence of any personal injury to A;
- (e) a payment (not falling within paragraphs (a) to (d)) received by virtue of any agreement or court order to make payments to A in consequence of any personal injury to A.

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**Commencement Information**

**I38** Sch. 1 para. 14 in force at 6.4.2016, see [reg. 1\(2\)](#)

**15.**—(1) Subject to sub-paragraphs (2) and (3), where A—

- (a) is not residing with their spouse or civil partner; and
- (b) at least 50% of any occupational pension of A's, or of any income from a personal pension scheme of A's, is being paid to, or in respect of, their spouse for that spouse's maintenance or their civil partner for that civil partner's maintenance,

an amount equal to 50% of the pension, pensions or income concerned.

(2) Where A is entitled to pensions or income referred to in sub-paragraph (1) from more than one source, all pensions and income to which A is entitled are to be aggregated for the purposes of that sub-paragraph.

(3) This paragraph does not have effect in respect of that part of any pension or income referred to in sub-paragraph (1) to which A's spouse or civil partner is legally entitled, whether or not under a court order.

**Commencement Information**

**I39** Sch. 1 para. 15 in force at 6.4.2016, see [reg. 1\(2\)](#)

**16.** Any amount which would be disregarded under paragraph 16 of Schedule 9 to the Income Support Regulations (specified pensions) save for paragraph 16(cc), but as if the reference in paragraph 16 of that Schedule to paragraphs 36 and 37 of Schedule 9 to the Income Support Regulations were a reference to paragraph 46 of this Schedule and as if, in relation to paragraph 16(a) of Schedule 9 to the Income Support Regulations, the reference in the opening words of paragraph 16 of that Schedule to £10 were a reference to £25 and as if the reference in paragraph 16(a) to paragraph 8 or 9 of Schedule 9 to the Income Support Regulations were a reference to paragraph 9 or 10 of this Schedule.

**Commencement Information**

**I40** Sch. 1 para. 16 in force at 6.4.2016, see [reg. 1\(2\)](#)

**17.** Any guaranteed income payment referred to in article 15(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011.

**Commencement Information**

**I41** Sch. 1 para. 17 in force at 6.4.2016, see [reg. 1\(2\)](#)

**18.** Subject to paragraph 46, £10 of any survivor's guaranteed income payment referred to in article 29(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 and, if the amount of that payment has been abated to less than £10 by a pension falling within article 39(1)(a) of that Order, so much of that pension as would not, in aggregate with the amount of any survivor's guaranteed income payment disregarded, exceed £10.

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.....  
**Commencement Information**

**I42** Sch. 1 para. 18 in force at 6.4.2016, see [reg. 1\(2\)](#)

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

.....  
**Commencement Information**

**I43** Sch. 1 para. 19 in force at 6.4.2016, see [reg. 1\(2\)](#)

**20.** Any income in kind.

.....  
**Commencement Information**

**I44** Sch. 1 para. 20 in force at 6.4.2016, see [reg. 1\(2\)](#)

**21.—(1)** Any income derived from capital to which A is or is treated under regulation 24 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraph 1, 4, 8, 14 or 22 of Schedule 2.

**(2)** Any income derived from capital disregarded under paragraph 4, 22 or 24 of Schedule 2 but only to the extent of any mortgage repayments and payments of council tax or water charges which A is liable to make in respect of the dwelling or premises in the period during which that income accrued.

.....  
**Commencement Information**

**I45** Sch. 1 para. 21 in force at 6.4.2016, see [reg. 1\(2\)](#)

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

.....  
**Commencement Information**

**I46** Sch. 1 para. 22 in force at 6.4.2016, see [reg. 1\(2\)](#)

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

.....  
**Commencement Information**

**I47** Sch. 1 para. 23 in force at 6.4.2016, see [reg. 1\(2\)](#)

**24.—(1)** Any payment made to A in respect of a child or young person who is a member of A's family—

**(a)** pursuant to regulations made under section 2(6)(b) or 3 of the Adoption and Children Act 2002;

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- (b) in accordance with an adoption allowance scheme made under section 71 of the Adoption and Children (Scotland) Act 2007 (adoption allowances schemes)(32);
- (c) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 (local authority contribution to a child's maintenance where a child is living with a person as a result of a child arrangements order)(33).

(2) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made to A pursuant to regulations made under section 2(6)(b) of the Adoption and Children Act 2002.

#### Commencement Information

**I48** Sch. 1 para. 24 in force at 6.4.2016, see [reg. 1\(2\)](#)

**25.** Any payment which would be disregarded under paragraph 26 or 28 of Schedule 9 to the Income Support Regulations (provision of accommodation and maintenance for children in care, and local authorities' duty to promote the welfare of children and powers to grant financial assistance to persons in or formerly in their care).

#### Commencement Information

**I49** Sch. 1 para. 25 in force at 6.4.2016, see [reg. 1\(2\)](#)

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

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

#### Commencement Information

**I50** Sch. 1 para. 26 in force at 6.4.2016, see [reg. 1\(2\)](#)

**27.** Any payment which would be disregarded under paragraph 31 or 31A of Schedule 9 to the Income Support Regulations (social fund payments and local welfare provision).

#### Commencement Information

**I51** Sch. 1 para. 27 in force at 6.4.2016, see [reg. 1\(2\)](#)

**28.** Any payment of income which under regulation 19 (income treated as capital) is to be treated as capital.

(32) 2007 asp 4.

(33) 1989 c. 41 (“the 1989 Act”). Section 15(1) of the 1989 Act was amended by paragraph 10(1) of Schedule 16 to the Courts and Legal Services Act 1990 (c. 41). Paragraph 15 of Schedule 1 to the 1989 Act was amended by section 78(3) of the Civil Partnership Act 2004 (c. 33) and paragraph 40(4) of Schedule 2 to the Children and Families Act 2014 (c. 6).

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**Commencement Information**

**I52** Sch. 1 para. 28 in force at 6.4.2016, see [reg. 1\(2\)](#)

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

**Commencement Information**

**I53** Sch. 1 para. 29 in force at 6.4.2016, see [reg. 1\(2\)](#)

30. Any payment which would be disregarded under paragraph 39 of Schedule 9 to the Income Support Regulations (the Fund, the Macfarlane Trusts and other trusts and Funds and the Independent Living Fund).

**Commencement Information**

**I54** Sch. 1 para. 30 in force at 6.4.2016, see [reg. 1\(2\)](#)

31. Any payment made under or by the Welsh Independent Living Scheme.

**Commencement Information**

**I55** Sch. 1 para. 31 in force at 6.4.2016, see [reg. 1\(2\)](#)

32. Any amount which would be disregarded under paragraphs 40, 43 and 48 to 51 of Schedule 9 to the Income Support Regulations (housing benefit compensation, juror and witness payments, travelling expenses and health service supplies, welfare food payments, prison visiting scheme payments and disabled persons’ employment payments).

**Commencement Information**

**I56** Sch. 1 para. 32 in force at 6.4.2016, see [reg. 1\(2\)](#)

33.—(1) Any child benefit, except in circumstances where A is accompanied by the child or qualifying young person in respect of whom the child benefit is payable, and accommodation is provided or secured for that child or qualifying young person in accordance with the Act.

(2) In this paragraph, “child” (“*plentyn*”) and “qualifying young person” (“*person ifanc cymwys*”) have the same meaning as in section 142 of the 1992 Act.

**Commencement Information**

**I57** Sch. 1 para. 33 in force at 6.4.2016, see [reg. 1\(2\)](#)

34. Any payment which would be disregarded under paragraph 53 of Schedule 9 to the Income Support Regulations (increases in rates of benefits etc.).

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#### Commencement Information

**I58** Sch. 1 para. 34 in force at 6.4.2016, see [reg. 1\(2\)](#)

**35.** Any payment which would be disregarded under paragraphs 54 to 56 of Schedule 9 to the Income Support Regulations (supplementary pensions etc.).

#### Commencement Information

**I59** Sch. 1 para. 35 in force at 6.4.2016, see [reg. 1\(2\)](#)

**36.** Any payment made by a local authority to or on behalf of A relating to welfare services in respect of which the Welsh Ministers have paid a grant to the local authority under section 93(2) of the Local Government Act 2000, where A qualified for that payment.

#### Commencement Information

**I60** Sch. 1 para. 36 in force at 6.4.2016, see [reg. 1\(2\)](#)

**37.** Any guardian's allowance.

#### Commencement Information

**I61** Sch. 1 para. 37 in force at 6.4.2016, see [reg. 1\(2\)](#)

**38.** Any child tax credit.

#### Commencement Information

**I62** Sch. 1 para. 38 in force at 6.4.2016, see [reg. 1\(2\)](#)

**39.** Any working tax credit.

#### Commencement Information

**I63** Sch. 1 para. 39 in force at 6.4.2016, see [reg. 1\(2\)](#)

**40.—(1)** Where A is in receipt of savings credit as a person who has no partner and has qualifying income not exceeding the standard minimum guarantee—

- (a) the amount of that savings credit where the amount received is £5.75 or less; or
- (b) £5.75 of that savings credit where the amount received is greater than £5.75.

(2) Where A—

- (a) has no partner;
- (b) has attained the age of 65; and
- (c) has qualifying income in excess of the standard minimum guarantee,

a sum of £5.75.

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(3) Where A is in receipt of savings credit as a person who has a partner and has qualifying income not exceeding the standard minimum guarantee—

- (a) the amount of that savings credit where the amount received is £8.60 or less; or
- (b) £8.60 of that savings credit where the amount received is greater than £8.60.

(4) Subject to sub-paragraph (5), where A—

- (a) has a partner;
- (b) has—
  - (i) attained the age of 65; or
  - (ii) has attained pension credit age and A's partner has attained the age of 65; and
- (c) has qualifying income in excess of the standard minimum guarantee,

a sum of £8.60.

(5) Where—

- (a) the sum referred to in sub-paragraph (4) has been disregarded in the assessment of A's partner's income under these Regulations; or
- (b) A's partner is in receipt of savings credit,

sub-paragraph (4) does not apply to A.

(6) For the purposes of this paragraph—

- (a) A has a partner if A would be considered to have a partner for the purposes of the Pension Credit Regulations;
- (b) “qualifying income” (“*incwm cymhwysu*”) is to be construed in accordance with regulation 9 of the Pension Credit Regulations and for the purposes of sub-paragraphs (3) and (4) the person's qualifying income includes any qualifying income of the A's partner;
- (c) “standard minimum guarantee” (“*gwarant isafswm safonol*”) means, for the purposes of—
  - (i) sub-paragraphs (1) and (2), the amount prescribed by regulation 6(1)(b) of the Pension Credit Regulations; and
  - (ii) sub-paragraphs (3) and (4), the amount prescribed by regulation 6(1)(a) of the Pension Credit Regulations.

#### Commencement Information

**I64** Sch. 1 para. 40 in force at 6.4.2016, see [reg. 1\(2\)](#)

**41.** Any payment made to a temporary resident in lieu of concessionary coal pursuant to section 19(1)(b) or (c) of the Coal Industry Act 1994<sup>(34)</sup>.

#### Commencement Information

**I65** Sch. 1 para. 41 in force at 6.4.2016, see [reg. 1\(2\)](#)

**42.** Any payment made to A under section 63(6)(b) of the Health Services and Public Health Act 1968<sup>(35)</sup> (“the 1968 Act”) (travelling and other allowances to persons availing themselves of

<sup>(34)</sup> 1994 c. 21.

<sup>(35)</sup> 1968 c. 46.

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instruction) for the purpose of meeting childcare costs where the instruction is provided pursuant to—

- (a) section 63(1)(a) of the 1968 Act; or
- (b) section 63(1)(b) of the 1968 Act and where A is employed, or has it in contemplation to be employed, in an activity involved in or connected with a service which must or may be provided or secured as part of the health service.

**Commencement Information**

**I66** Sch. 1 para. 42 in force at 6.4.2016, see [reg. 1\(2\)](#)

**43.** Any payment made in accordance with regulations made pursuant to section 14F of the Children Act 1989 (special guardian support services)<sup>(36)</sup> to A where A is a prospective special guardian or a special guardian.

**Commencement Information**

**I67** Sch. 1 para. 43 in force at 6.4.2016, see [reg. 1\(2\)](#)

**44.—(1)** Where A is a student, any grant or other award, student loan, income used to make repayments on a student loan or other payment received by A for the purposes of their course of study at an educational establishment.

(2) In this paragraph, “course of study” (“*cwrs o astudiaeth*”), “student” (“*myfyriwr*”) and “student loan” (“*benthyciad myfyriwr*”) have the same meaning as in the Income Support Regulations.

**Commencement Information**

**I68** Sch. 1 para. 44 in force at 6.4.2016, see [reg. 1\(2\)](#)

## PART 2

Special provisions relating to charitable or voluntary payments and certain pensions

- 45.** Paragraph 14 does not apply to any payment which is made or due to be made—
- (a) by A for the maintenance of any member of A’s family or of A’s former partner or of A’s children; or
  - (b) by a third party pursuant to an agreement between the local authority and that third party in connection with the liability of A to pay, contribute or make reimbursements to the local authority for or in respect of A’s accommodation.

**Commencement Information**

**I69** Sch. 1 para. 45 in force at 6.4.2016, see [reg. 1\(2\)](#)

<sup>(36)</sup> Section 14F was inserted by section 115(1) of the Adoption and Children Act 2002 (c. 38).



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**46.** The total income to be disregarded pursuant to paragraphs 14(2) and 16 must in no case exceed the amount per week specified in paragraph 36 of Schedule 9 to the Income Support Regulations (£20 per week ceiling for aggregated disregards).

**Commencement Information**

**I70** Sch. 1 para. 46 in force at 6.4.2016, see [reg. 1\(2\)](#)

SCHEDULE 2

Regulation 18(2)

Capital to be disregarded

**1.—(1)** Where A is a temporary resident but not a prospective resident, the value of A's main or only home in circumstances where—

- (a) A is taking reasonable steps to dispose of the dwelling in order that they may acquire another dwelling which they intend to occupy as their main or only home; or
- (b) A intends to return to occupy that dwelling as their main or only home and the dwelling is still available to them.

(2) Where A is a temporary resident who is a prospective resident, the value of A's main or only home in circumstances where A intends, on being provided with or securing in fact accommodation in accordance with the Act—

- (a) to take reasonable steps to dispose of the dwelling in order that they may acquire another dwelling which they intend to occupy as their main or only home; or
- (b) to return to occupy that dwelling as their main or only home and the dwelling to which A intends to return is available to them.

**Commencement Information**

**I71** Sch. 2 para. 1 in force at 6.4.2016, see [reg. 1\(2\)](#)

**2.—(1)** Where A is a permanent resident the value of A's main or only home which A would otherwise normally occupy ("A's home") for a period of 12 weeks beginning with the day on which A first moves into accommodation in a care home ("the first period of permanent residence").

(2) Where A—

- (a) ceases to be a permanent resident; and
- (b) subsequently becomes a permanent resident again at any time within the period of 52 weeks from the end of the first period of permanent residence,

the value of A's home for such period (if any) which when added to the period disregarded under sub-paragraph (1) in respect of their first period of permanent residence does not exceed 12 weeks in total.

(3) Where A—

- (a) ceases to be a permanent resident and is not a person to whom sub-paragraph (2) has applied; and
- (b) subsequently becomes a permanent resident again at any time after a period of more than 52 weeks from the end of the first period of permanent residence,

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the value of A's home for a period of 12 weeks beginning with the day on which the second period of permanent residence begins.

(4) In this paragraph, "the second period of permanent residence" ("*yr ail gyfnod preswyllo parhaol*") means the period of permanent residence beginning at any time after the period of 52 weeks referred to in sub-paragraph (3)(b).

#### Commencement Information

I72 Sch. 2 para. 2 in force at 6.4.2016, see [reg. 1\(2\)](#)

3. Where A is a permanent resident and there is an unexpected change in their financial circumstances the local authority may disregard the value of A's main or only home which A would normally otherwise occupy for a period of 12 weeks.

#### Commencement Information

I73 Sch. 2 para. 3 in force at 6.4.2016, see [reg. 1\(2\)](#)

4.—(1) The value of any premises—

- (a) which would be disregarded under paragraph 2 or 4(b) of Schedule 10 to the Income Support Regulations (premises acquired for occupation, and premises occupied by a former partner) but as if for the words "his home" in each provision there were substituted "his main or only home"; or
- (b) which is occupied in whole or in part as their main or only home by a qualifying relative of A's who has occupied the premises as their main or only home since before the date on which A was first provided with or secured accommodation in a care home in accordance with the Act.

(2) A local authority may disregard the value of any premises which is occupied in whole or in part by a qualifying relative of A's as their main or only home where the qualifying relative occupied the premises after the date on which A was first provided with or secured accommodation in a care home in accordance with the Act.

(3) The value of any premises for a period of 12 weeks where the local authority has disregarded the value of the premises under sub-paragraph (1)(b) or (2) and that relative has died or is no longer occupying the premises because they have been provided with or secured accommodation in a care home.

(4) The local authority may disregard the value of any premises for a period of 12 weeks where the premises were occupied in whole or in part by a qualifying relative of A's as their main or only home and that relative is no longer occupying the premises because of an unexpected change in their circumstances.

(5) In this paragraph—

"child" ("*plentyn*") is to be construed in accordance with section 1 of the Family Law Reform Act 1987<sup>(37)</sup>;

"qualifying relative" ("*perthynas cymwys*") means the A's—

- (a) partner;
- (b) other family member or relative who is aged 60 or over or who is incapacitated; or
- (c) child who is under 18.

<sup>(37)</sup> 1987 c. 42.

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#### Commencement Information

**I74** Sch. 2 para. 4 in force at 6.4.2016, see [reg. 1\(2\)](#)

5. Where A is a resident who has ceased to occupy what was formerly the dwelling occupied by them as their main or only home following their estrangement or divorce from their former partner, the value of A's interest in that dwelling where it is still occupied as the home by the former partner who is a lone parent.

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#### Commencement Information

**I75** Sch. 2 para. 5 in force at 6.4.2016, see [reg. 1\(2\)](#)

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

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#### Commencement Information

**I76** Sch. 2 para. 6 in force at 6.4.2016, see [reg. 1\(2\)](#)

7. Any future interest in property which would be disregarded under paragraph 5 of Schedule 10 to the Income Support Regulations (future interests in property other than in certain land or premises).

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#### Commencement Information

**I77** Sch. 2 para. 7 in force at 6.4.2016, see [reg. 1\(2\)](#)

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

- (a) where A is a resident other than a prospective resident the words “the accommodation was initially provided or secured”;
- (b) where A is a prospective resident, the words “the local authority began to assess A's ability to pay for, contribute, or make reimbursements towards the cost of their accommodation under these Regulations and the Care and Support (Charging) (Wales) Regulations 2015”.

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#### Commencement Information

**I78** Sch. 2 para. 8 in force at 6.4.2016, see [reg. 1\(2\)](#)

9. Any amount which would be disregarded under paragraph 7(1) of Schedule 10 to the Income Support Regulations (arrear payments), but as if the words “Subject to sub-paragraph (2)” at the beginning of that sub-paragraph were omitted and as if the reference in paragraph (a) of that sub-paragraph to paragraphs 6, 8 or 9 of Schedule 9 to the Income Support Regulations (other income to be disregarded) were a reference to paragraphs 7 to 10 of Schedule 1 (sums to be disregarded in the calculation of income).

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#### Commencement Information

**I79** Sch. 2 para. 9 in force at 6.4.2016, see [reg. 1\(2\)](#)

**10.** Any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of—

- (a) child tax credit;
- (b) working tax credit;
- (c) a payment which is made under any of—
  - (i) the Order in Council of 19 December 1881;
  - (ii) the Royal warrant of 27 October 1884;
  - (iii) the Order by his Majesty of 14 January 1922,

to a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown and whose service in such capacity terminated before 31 March 1973, but only for a period of 52 weeks from the date of the receipt of the arrears or the concessionary payment.

#### Commencement Information

**I80** Sch. 2 para. 10 in force at 6.4.2016, see [reg. 1\(2\)](#)

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

#### Commencement Information

**I81** Sch. 2 para. 11 in force at 6.4.2016, see [reg. 1\(2\)](#)

**12.** Any personal possessions except those which had or have been acquired by A with the intention of reducing their capital in order to satisfy a local authority that they were unable to pay towards the cost of their care and support or support.

#### Commencement Information

**I82** Sch. 2 para. 12 in force at 6.4.2016, see [reg. 1\(2\)](#)

**13.** Any amount which would be disregarded under paragraph 11 of Schedule 10 to the Income Support Regulations (income under an annuity).

#### Commencement Information

**I83** Sch. 2 para. 13 in force at 6.4.2016, see [reg. 1\(2\)](#)

**14.** Any amount which would be disregarded under paragraph 12 of Schedule 10 to the Income Support Regulations (personal injury trusts).

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**Commencement Information**

**I84** Sch. 2 para. 14 in force at 6.4.2016, see [reg. 1\(2\)](#)

**15.** Any amount which would be disregarded under paragraph 12A of Schedule 10 to the Income Support Regulations (personal injury payments) with the exception of any payment or any part of any payment that has been specifically identified by a court to deal with the cost of providing care.

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**Commencement Information**

**I85** Sch. 2 para. 15 in force at 6.4.2016, see [reg. 1\(2\)](#)

**16.** Any amount which would be disregarded under paragraph 13 of Schedule 10 to the Income Support Regulations (life interest or life rent).

---

**Commencement Information**

**I86** Sch. 2 para. 16 in force at 6.4.2016, see [reg. 1\(2\)](#)

**17.** The value of the right to receive any income which is disregarded under paragraph 20 of Schedule 1 (sums to be disregarded in the calculation of income).

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**Commencement Information**

**I87** Sch. 2 para. 17 in force at 6.4.2016, see [reg. 1\(2\)](#)

**18.** Any amount which would be disregarded under paragraph 15, 16, 18, 18A or 19 of Schedule 10 to the Income Support Regulations (surrender value of life insurance policy, outstanding instalments, social fund payments, local welfare provision and tax refunds on certain loan interest).

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**Commencement Information**

**I88** Sch. 2 para. 18 in force at 6.4.2016, see [reg. 1\(2\)](#)

**19.** Any capital which under regulation 16 (capital treated as income) is to be treated as income.

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**Commencement Information**

**I89** Sch. 2 para. 19 in force at 6.4.2016, see [reg. 1\(2\)](#)

**20.** Any amount which would be disregarded under paragraphs 21 to 24 of Schedule 10 to the Income Support Regulations (charge or commission for converting capital into sterling, the Macfarlane Trusts, the Fund and the Independent Living Fund, value of the right to receive personal or occupational pension, value of funds under personal pension scheme and rent).

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**Commencement Information**

**I90** Sch. 2 para. 20 in force at 6.4.2016, see [reg. 1\(2\)](#)

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21. Any amount paid under or by the Welsh Independent Living Scheme.

**Commencement Information**

**I91** Sch. 2 para. 21 in force at 6.4.2016, see [reg. 1\(2\)](#)

22. The value of any premises which would be disregarded under paragraph 27 or 28 of Schedule 10 to the Income Support Regulations (premises a claimant intends to occupy) but as if for the words “his home” in each provision there were substituted “his main or only home”.

**Commencement Information**

**I92** Sch. 2 para. 22 in force at 6.4.2016, see [reg. 1\(2\)](#)

23. Any amount which would be disregarded under paragraphs 29 to 31, 34 and 36 to 43 of Schedule 10 to the Income Support Regulations (fund payments in kind, training bonuses, housing benefit compensation, juror or witness payments, reduction of liability for personal community charge, housing grants, travelling expenses and health service supplies, welfare food payments, health in pregnancy grant, prison visiting scheme payments, special war widows payments, disabled persons’ employment payments, and blind homeworkers’ payments).

**Commencement Information**

**I93** Sch. 2 para. 23 in force at 6.4.2016, see [reg. 1\(2\)](#)

24. The value of any premises occupied in whole or in part by a third party where the local authority considers it would be reasonable to disregard the value of those premises.

**Commencement Information**

**I94** Sch. 2 para. 24 in force at 6.4.2016, see [reg. 1\(2\)](#)

25. Any amount which—

- (a) falls within paragraph 44(2)(a) (damages for personal injury), and would be disregarded under paragraph 44(1)(a) or (b), of Schedule 10 to the Income Support Regulations; or
- (b) would be disregarded under paragraph 45(a) of that Schedule.

**Commencement Information**

**I95** Sch. 2 para. 25 in force at 6.4.2016, see [reg. 1\(2\)](#)

26. Any amount which would be disregarded under paragraph 61 of Schedule 10 to the Income Support Regulations (ex-gratia payment made by the Secretary of State in consequence of imprisonment or internment by the Japanese during the Second World War).

**Commencement Information**

**I96** Sch. 2 para. 26 in force at 6.4.2016, see [reg. 1\(2\)](#)

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27. Any payment which would be disregarded under paragraph 64 of Schedule 10 to the Income Support Regulations (payments under a trust established out of funds provided by the Secretary of State in respect of persons who suffered or are suffering from variant Creutzfeldt-Jakob disease).

.....  
**Commencement Information**

I97 Sch. 2 para. 27 in force at 6.4.2016, see [reg. 1\(2\)](#)

28. Any payment made by a local authority to or on behalf of A relating to welfare services in respect of which the Welsh Ministers have paid a grant to the local authority under section 93(2) of the Local Government Act 2000 where A qualified for the payment.

.....  
**Commencement Information**

I98 Sch. 2 para. 28 in force at 6.4.2016, see [reg. 1\(2\)](#)

29. Any payment made to A pursuant to regulations made under section 2(6)(b) or 3 of the Adoption and Children Act 2002.

.....  
**Commencement Information**

I99 Sch. 2 para. 29 in force at 6.4.2016, see [reg. 1\(2\)](#)

30. Any payment made to A under section 2 or 3 of the Age-Related Payments Act 2004 (entitlement: basic or special cases)(38).

.....  
**Commencement Information**

I100 Sch. 2 para. 30 in force at 6.4.2016, see [reg. 1\(2\)](#)

31. Any payment made to A under Part 2 (payments to persons over the age of 65) or Part 3 (payments to persons in receipt of guarantee credit) of the Age-Related Payments Regulations 2005(39).

.....  
**Commencement Information**

I101 Sch. 2 para. 31 in force at 6.4.2016, see [reg. 1\(2\)](#)

32. Any payment made to A under section 63(6)(b) of the Health Services and Public Health Act 1968 (“the 1968 Act”) (travelling and other allowances to persons availing themselves of instruction) for the purpose of meeting childcare costs where the instruction is provided pursuant to—

- (a) section 63(1)(a) of the 1968 Act; or
- (b) section 63(1)(b) of the 1968 Act and where A is employed, or has it in contemplation to be employed, in an activity involved in or connected with a service which must or may be provided or secured as part of the health service.

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(38) 2004 c. 10.

(39) S.I. 2005/1983.

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#### Commencement Information

**I102** Sch. 2 para. 32 in force at 6.4.2016, see [reg. 1\(2\)](#)

**33.** Any payment made in accordance with regulations made pursuant to section 14F of the Children Act 1989 (special guardian support services) to A where A is a prospective special guardian or a special guardian.

#### Commencement Information

**I103** Sch. 2 para. 33 in force at 6.4.2016, see [reg. 1\(2\)](#)

**34.** Any payment made to A under regulations made under section 7 of the Age-Related Payments Act 2004 (power to provide future payments).

#### Commencement Information

**I104** Sch. 2 para. 34 in force at 6.4.2016, see [reg. 1\(2\)](#)

PROSPECTIVE

## EXPLANATORY NOTE

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

These Regulations make provision under the Social Services and Well-being (Wales) Act 2014 (“the Act”) about the way in which a local authority must carry out a financial assessment of a person’s (“A”) financial resources in the following cases—

- (a) where the authority thinks that if it were to meet A’s needs for care and support (or a carer’s needs for support) it would impose a charge under section 59 of the Act, or
- (b) where the authority thinks that if it were to make payments towards meeting the cost of A’s needs for care and support (or a carer’s needs for support) by making direct payments by virtue of sections 50 or 52 of the Act, it would require A to pay, by way of reimbursement (in the case of gross payments) or contribution (in the case of net payments), towards the cost of securing the provision of that care and support.

Part 2 of these Regulations makes provision about the process a local authority must follow when undertaking a financial assessment and also makes general provision about financial assessments.

Regulation 6 requires a local authority to carry out a financial assessment in accordance with the requirements of these Regulations.

Regulation 7 specifies the circumstances in which the duty to carry out a financial assessment does not apply and those in which a local authority may complete a financial assessment in the absence of complete disclosure of A’s financial details.



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Regulation 8 makes provision about the local authority's power to carry out a new financial assessment in certain circumstances.

Regulation 9 makes provision about the process a local authority is required to adopt when carrying out an assessment of A's financial resources. It requires a local authority to disregard the value of A's only or main home from its calculation of A's capital resources when A is receiving care and support in their own home (as opposed to receiving such support by the provision of accommodation in a care home).

Regulation 10 requires a local authority to carry out an assessment of the financial resources of a short-term resident (persons who are provided with accommodation in a care home for a period of not exceeding 8 weeks) as if they were in receipt of care and support in their own home.

Regulation 11 contains a saving provision which preserves the effect of any financial assessment carried out by a local authority which has effect immediately before the coming into force of these Regulations (notwithstanding that it was not carried out under the Act or in accordance with these Regulations) until it is replaced by an assessment carried out in accordance with the Act and the requirements of these Regulations.

Part 3 and Schedule 1 make provision about the treatment and calculation of income. Schedule 1 sets out the income that must or may be disregarded by a local authority.

Part 4 and Schedule 2 make provision about the treatment and calculation of capital. Schedule 2 sets out the capital sums that must or may be disregarded by the local authority.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Health and Social Services Group, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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**Changes and effects yet to be applied to :**

- Sch. 1 para. 1 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 2 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 3 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 4 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 5 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 6 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 7 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 8 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 9 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 10 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 11 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 12 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 13 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 14 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 15 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 16 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 17 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 18 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 19 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 20 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 21 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 22 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 23 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 24 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 25 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 26 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 27 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 28 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 29 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 30 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 31 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
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- Sch. 1 para. 35 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 36 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 37 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 38 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 39 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 40 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 41 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 42 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 43 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 44 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 45 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)
- Sch. 1 para. 46 coming into force by [S.I. 2015/1844 reg. 1\(2\)](#)



- reg. 21 coming into force by S.I. 2015/1844 reg. 1(2)
- reg. 22 coming into force by S.I. 2015/1844 reg. 1(2)
- reg. 23 coming into force by S.I. 2015/1844 reg. 1(2)
- reg. 24 coming into force by S.I. 2015/1844 reg. 1(2)

**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. 1 para. 16A inserted by S.I. 2017/214 reg. 4(b)
- Sch. 1 para. 44A44B inserted by S.I. 2022/99 reg. 3(a)(ii)
- Sch. 2 para. 35 inserted by S.I. 2019/234 reg. 3
- Sch. 2 para. 36-39 inserted by S.I. 2022/99 reg. 3(b)(ii)
- Sch. 2 para. 4041 inserted by S.I. 2023/67 reg. 3(a)(ii)
- Sch. 2 para. 40 words substituted by S.I. 2023/424 Sch. para. 61