
STATUTORY INSTRUMENTS

1990 No. 1189

HOUSING, ENGLAND AND WALES

**The Housing Renovation etc. Grants
(Reduction of Grant) Regulations 1990**

<i>Made</i>	- - - -	<i>5th June 1990</i>
<i>Laid before Parliament</i>		<i>8th June 1990</i>
<i>Coming into force</i>	- -	<i>1st July 1990</i>

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by sections 109, 137(2) and 190(1) of the Local Government and Housing Act 1989(1) and of all other powers enabling them in that behalf, and with the consent of the Treasury, hereby make the following Regulations:

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Housing Renovation etc. Grants (Reduction of Grant) Regulations 1990 and shall come into force on 1st July 1990.

Interpretation

- 2.—(1) In these Regulations, unless the context otherwise requires—
- “the Act” means the Local Government and Housing Act 1989;
 - “the 1975 Act” means the Social Security Act 1975(2);
 - “the 1986 Act” means the Social Security Act 1986(3);
 - “application” means an application within section 109(1) of the Act;
 - “assessment period” means such period as is prescribed in regulations 17 to 19 over which income falls to be determined;

(1) 1989 c. 42.
(2) 1975 c. 14.
(3) 1986 c. 50.

“attendance allowance” means–

- (a) an attendance allowance under section 35 of the 1975 Act(4);
- (b) an increase of disablement pension under section 61 of that Act(5);
- (c) a payment under regulations made in exercise of the power conferred by section 159(3) (b) of that Act;
- (d) an increase of an allowance which is payable in respect of constant attendance under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975(6);
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(7) or any analogous payment;
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

“the benefit Acts” has the meaning assigned by section 84(1) of the 1986 Act(8);

“boarder” means a person who pays a charge for his accommodation and at least some cooked or prepared meals which are both prepared and consumed in that accommodation or associated premises;

“child” means a person under the age of 16;

“child benefit” means child benefit under Part I of the Child Benefit Act 1975(9);

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

“community charge benefits” means community charge benefits under Part II of the 1986 Act(10);

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the 1986 Act, the 1975 Act or the Child Benefit Act 1975 are charged;

“earnings” has the meaning assigned by regulation 21 or, as the case may be, 23;

“employed earner” is to be construed in accordance with section 2(1)(a) of the 1975 Act;

“family” means–

- (a) a married or unmarried couple;
- (b) a married or unmarried couple and a member of the same household for whom one of them is or both are responsible and who is a child or a young person;
- (c) a person who is not a member of a married or unmarried couple and a member of the same household for whom that person is responsible and who is a child or a young person;

“health authority” has the same meaning as in section 128(1) of the National Health Service Act 1977(11);

“housing benefit” means housing benefit under Part II of the 1986 Act;

(4) Section 35 was amended by the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 63, the Social Security Act 1979 (c. 18), section 2 and by the Social Security Act 1980 (c. 30), Schedule 1, Part II, paragraph 8.

(5) Sub-sections (3) and (4) of section 61 were added by the Social Security Act 1986 (c. 50), Schedule 3, paragraph 6.

(6) 1975 c. 16.

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

(8) Section 84(1) was amended by the Social Security Act 1989 (c. 24), Schedule 8, paragraph 19(e).

(9) 1975 c. 61.

(10) Part II was amended by Schedule 10 to the Local Government Finance Act 1988 (c. 41).

(11) 1977 c. 49; this definition was substituted by paragraph 11 of Schedule 3 to the Health and Social Security Act 1984 (c. 48).

“income-related benefit” means any benefit to which section 20(1) of the 1986 Act refers;

“income support” means income support under Part II of the 1986 Act;

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

“invalid carriage or other vehicle” means a vehicle propelled by petrol engine or electric power supplied for use on the road and to be controlled by the occupant;

“local authority” means—

(a) in relation to England and Wales, the council of a district or London borough, the Common Council of the City of London or the Council of the Isles of Scilly; and

(b) in relation to Scotland, an islands or district council;

“lone parent” means a person who has no partner and who is responsible for and a member of the same household as a child or young person;

“the MacFarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

“the MacFarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990, partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;

“married couple” has the meaning assigned to it by section 20(11) of the 1986 Act;

“member of a couple” means a member of a married or unmarried couple;

“mobility allowance” means an allowance under section 37A of the 1975 Act(12);

“mobility supplement” means a supplement to which paragraph 7 of Schedule 3 refers;

“net earnings” means such earnings as are determined in accordance with regulation 22;

“net profit” means such profit as is determined in accordance with regulation 24;

“non-dependant” has the meaning assigned by regulation 4;

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

“partner” means—

(a) where a person is a member of a married or unmarried couple, the other member of that couple; or

(b) where a person is polygamously married to two or more members of his household, any such member;

“payment” includes part of a payment;

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

(12) Section 37A was inserted by section 22(1) of the Social Security Pensions Act 1975 (c. 60) and amended by the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 64, the Social Security Act 1979 (c. 18), section 3 and the Social Security Act 1986, section 71 and Schedule 11.

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

“rates”–

- (a) in relation to England and Wales, has the same meaning as in the General Rate Act 1967⁽¹³⁾; and
- (b) in relation to Scotland, has the same meaning as in section 379 of the Local Government (Scotland) Act 1947⁽¹⁴⁾ except that it does not include domestic water rate within the meaning of section 39 of the Water (Scotland) Act 1980;⁽¹⁵⁾

“relevant person” has the meaning assigned by regulation 3;

“remunerative work” has the meaning assigned by regulation 5;

“self-employed earner” is to be construed in accordance with section 2(1)(b) of the 1975 Act;

“single person” means a person who neither has a partner nor is a lone parent;

“social fund payment” means a payment under section 32 of the 1986 Act;

“student” has the meaning assigned by regulation 38;

“training allowance” has the meaning assigned by regulation 2(1) of the Housing Benefit (General) Regulations 1987⁽¹⁶⁾;

“unmarried couple” means a man and woman who are not married to each other but are living together as husband and wife;

“war disablement pension” has the meaning assigned by section 84(1) of the 1986 Act;

“war widow’s pension” has the meaning assigned by section 84(1) of the 1986 Act⁽¹⁷⁾;

“year of assessment” has the meaning assigned by section 832(1) of the Income and Corporation Taxes Act 1988⁽¹⁸⁾;

“young person” means a person, not being a person who is in receipt of income support or a person who is receiving advanced education within the meaning of regulation 12(2) of the Income Support (General) Regulations 1987⁽¹⁹⁾ (relevant education), aged 16 or over but under 19 who is treated as a child for the purposes of section 2 of the Child Benefit Act 1975⁽²⁰⁾ (meaning of child).

(2) In these Regulations, unless the context otherwise requires, a reference–

- (a) to a numbered Part is to the Part of these Regulations bearing that number;
- (b) to a numbered regulation or Schedule is to the regulation in, or the Schedule to, these Regulations bearing that number;
- (c) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;
- (d) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

(13) 1967 c. 9.

(14) 1947 c. 43 (10 & 11 Geo. 6).

(15) 1980 c. 45.

(16) S.I. 1987/1971; the definition was inserted by S.I. 1990/546, regulation 2(b).

(17) The definitions were amended by the Income and Corporation Taxes Act 1988 (c. 1), Schedule 29, paragraph 32, Table.

(18) 1988 c. 1.

(19) S.I. 1987/1967; regulation 12 was substituted by regulation 5 of S.I. 1990/547.

(20) 1975 c. 61; section 2 was amended by sections 4 and 8 of, and Schedule 5, Part I to, the Social Security Act 1980 (c. 30), section 70 of the Social Security Act 1986 and section 4(3) of the Social Security Act 1988(c. 7).

Definition of relevant person

3.—(1) Subject to paragraphs (2) and (3), in respect of any one application a relevant person is any person who—

- (a) is an applicant, or
- (b) is not an applicant but is entitled to make the application and lives or intends to live in the dwelling or, as the case may be, a flat in the building or,
- (c) where the application is for a disabled facilities grant, is the disabled occupant or one of the disabled occupants and is neither a person to whom sub-paragraph (a) or (b) applies nor a child or young person.

(2) Where any of sub-paragraphs (a), (b) or (c) of paragraph (1) applies to both members of a couple or to more than one member of a polygamous marriage, one member only of that couple or of that polygamous marriage shall be a relevant person in respect of that application.

(3) A young person shall not be a relevant person except where he is the only applicant.

Definition of non-dependant

4.—(1) In these Regulations, “non-dependant” means any person, except someone to whom paragraph (2) applies, who normally resides with a relevant person.

(2) This paragraph applies to—

- (a) any member of the relevant person’s family;
- (b) if the relevant person is polygamously married, any partner of his and any child or young person who is a member of his household and for whom he or one of his partners is responsible;
- (c) a child or young person who is living with the relevant person but who is not a member of his household by virtue of regulation 7 (membership of the same household);
- (d) subject to paragraph (3), a person who jointly occupies the relevant person’s dwelling and is either a co-owner of that dwelling with the relevant person or his partner (whether or not there are other co-owners) or is liable with the relevant person or his partner to make payments in respect of his occupation of the dwelling;
- (e) subject to paragraph (3), any person who is liable to make payments on a commercial basis to the relevant person or the relevant person’s partner or to whom or to whose partner the relevant person or the relevant person’s partner is liable to make payments on a commercial basis, in respect of the occupation of the dwelling;
- (f) a person who lives with the relevant person in order to care for him or a partner of his and who is engaged by a charitable or voluntary body (other than a public or local authority) which makes a charge to the relevant person or his partner for the services provided by that person.

(3) Excepting persons to whom paragraph (2)(a) to (c) and (f) refer, a person shall be a non-dependant if he resides with a relevant person to whom he is liable to make payments in respect of the dwelling and either—

- (a) that relevant person is a close relative of his or his partner, or
- (b) the tenancy or other agreement between them is other than on a commercial basis.

(4) For the purposes of this regulation—

- (a) a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area but not if each person is separately liable to make payments in respect of his occupation of the dwelling to the landlord;

- (b) “communal area” means an area, other than a room or rooms, of common access (including halls and passageways).

Remunerative work

5.—(1) Subject to the following provisions of this regulation, a person shall be treated for the purposes of these Regulations as engaged in remunerative work if he is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 24 hours a week, in work for which payment is made or which is done in expectation of payment.

(2) In determining the number of hours for which a person is engaged in work where his hours of work fluctuate, regard shall be had to the average of hours worked over—

- (a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does not work, those periods but disregarding any other absences);
- (b) in any other case, the period of 5 weeks immediately prior to the date of the application, or such other length of time as may, in the particular case, enable the person’s weekly average hours of work to be determined more accurately.

(3) Where no recognisable cycle has been established in respect of a person’s work, regard shall be had to the number of hours or, where those hours fluctuate, the average of the hours, which he is expected to work in a week.

(4) A person shall be treated as engaged in remunerative work during any period for which he is absent from work referred to in paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(5) A person in receipt of income support for more than 3 days in any period of 7 consecutive days commencing upon a Monday and ending on a Sunday shall be treated as not being in remunerative work in that week.

Circumstances in which a person is to be treated as responsible or not responsible for another

6.—(1) Subject to the following provisions of this regulation a person shall be treated as responsible for a child or young person who is normally living with him.

(2) Where there is a question as to which person a child or young person is normally living with, the child or young person shall be treated for the purposes of paragraph (1) as normally living with—

- (a) the person who is receiving child benefit in respect of him; or
- (b) if there is no such person—
 - (i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or
 - (ii) in any other case the person who has the primary responsibility for him.

(3) For the purposes of these Regulations any person other than the one treated as responsible for the child or young person under this regulation shall be treated as not so responsible.

Circumstances in which a person is to be treated as being or not being a member of the household

7.—(1) Subject to paragraphs (2) to (4), a relevant person and any partner and, where the relevant person or his partner is treated as responsible by virtue of regulation 6 (circumstances in which a person is to be treated as responsible or not responsible for another) for a child or young person, that

child or young person and any child of that child or young person, shall be treated as members of the same household where any of them is absent from the dwelling occupied as his home.

(2) A child or young person shall not be treated as a member of the relevant person's household where he is—

- (a) boarded out with the relevant person or his partner under a relevant enactment; or
- (b) boarded out with the relevant person or his partner prior to adoption; or
- (c) placed for adoption with the relevant person or his partner pursuant to a decision under the Adoption Agencies Regulations 1983(21) or the Adoption Agencies (Scotland) Regulations 1984(22).

(3) Subject to paragraph (4), paragraph (1) shall not apply to a child or young person who is not living with the relevant person and he—

- (a) is in the care of a local authority under a relevant enactment; or
- (b) has been boarded out with a person other than the relevant person prior to adoption; or
- (c) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations 1983 or the Adoption Agencies (Scotland) Regulations 1984.

(4) A child or young person to whom paragraph (3)(a) applies shall be treated as being a member of the relevant person's household in any period of 7 consecutive days commencing upon a Monday and ending on a Sunday where—

- (a) that child or young person lives with the relevant person for part or all of that period, and
- (b) it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.

(5) In this regulation "relevant enactment" means the Army Act 1955(23), the Air Force Act 1955(24), the Naval Discipline Act 1957(25), the Adoption Act 1958(26), the Matrimonial Proceedings (Children) Act 1958(27), the Children Act 1958(28), the Social Work (Scotland) Act 1968(29), the Family Law Reform Act 1969(30), the Children and Young Persons Act 1969(31), the Matrimonial Causes Act 1973(32), the Guardianship Act 1973(33), the Children Act 1975(34), the Domestic Proceedings and Magistrates' Courts Act 1978(35), the Adoption (Scotland) Act 1978(36), the Child Care Act 1980(37) and the Foster Children Act 1980(38).

The applicable amount

8. The applicable amount in respect of any one application shall be the aggregate of—

- (a) the total of the weekly applicable amounts of all those persons who are relevant persons in the case of that application, and

(21) S.I. 1983/1964.

(22) S.I. 1984/988.

(23) 1955 c. 18.

(24) 1955 c. 19.

(25) 1957 c. 53.

(26) 1958 c. 5.

(27) 1958 c. 40.

(28) 1958 c. 65.

(29) 1968 c. 49.

(30) 1969 c. 46.

(31) 1969 c. 54.

(32) 1973 c. 18.

(33) 1973 c. 29.

(34) 1975 c. 72.

(35) 1978 c. 22.

(36) 1978 c. 28.

(37) 1980 c. 5.

(38) 1980 c. 6.

(b) £20;

and the applicable amount of each relevant person shall be determined in accordance with regulation 12.

Financial resources

9. In respect of any one application, the amount which is to be taken to be the financial resources of the applicant or applicants shall be the total of the incomes of all those persons who are relevant persons in the case of that application, and the income of each relevant person shall be determined in accordance with regulation 16.

PART II

REDUCTION IN AMOUNT OF GRANT

Reduction in amount of grant

10. The amount of any grant which may be paid in respect of an application shall, if the financial resources of the applicant or applicants exceed the applicable amount, be reduced from what it would otherwise have been by the amount obtained by multiplying the amount of that excess by—

- (a) where the application is accompanied by an owner-occupation certificate, 51.54,
- (b) where the application is accompanied by a tenant's certificate, 34.62.

Successive applications

11.—(1) In this regulation “current application” means an application to which regulation 10 refers.

(2) The amount by which a grant in respect of a current application is reduced shall, except where paragraph (4) applies, be abated—

- (a) in a case to which paragraph (3)(a) or (b) applies, by the amount by which any grant paid in respect of any application there referred to was itself reduced by virtue of regulation 10 and this regulation;
- (b) in a case to which paragraph (3)(c) or (d) applies, by the amount by which any grant paid in respect of any application there referred to was itself reduced, by virtue of section 111(4) of the Act, by reference to persons (other than participating landlords) who are relevant persons in the current application;
- (c) in a case to which paragraph (3)(e) applies, by the amount of any contribution notified under section 129(1) of the Act to any person who is a relevant person in the current application.

(3) Subject to paragraph (4), this paragraph applies where—

- (a) within the 10 years preceding the date of approval of the current application, at least one application, accompanied by an owner-occupation certificate, relating to the same dwelling or building was made, in respect of which at least one of the relevant persons is a relevant person in the current application;
- (b) within the 5 years preceding the date of approval of the current application, at least one application, accompanied by a tenant's certificate, relating to the same dwelling or building was made, in respect of which at least one of the relevant persons is a relevant person in the current application;

- (c) within the 10 years preceding the date of approval of the current application, at least one tenants' common parts application relating to the same building was made, in respect of which at least one of the relevant persons in the current application was an occupying tenant in relation to a flat in the building by virtue of the interest mentioned in paragraph (b) of section 105(4) of the Act (common parts grants: preliminary conditions) and was also an applicant;
 - (d) within the 5 years preceding the date of approval of the current application, at least one tenants' common parts application relating to the same building was made, in respect of which at least one of the relevant persons in the current application was an occupying tenant in relation to a flat in the building by virtue of such an interest as is mentioned in any of paragraphs (c) to (e) of section 105(4) of the Act and was also an applicant; or
 - (e) within the 10 years preceding the date of approval of the current application, at least one of the relevant persons in the current application signified scheme consent under section 129(1) of the Act (contributions by participants) in respect of at least one group repair scheme in relation to which the same dwelling, building or flat was, or was part of, a qualifying building.
- (4) Paragraph (2) does not apply in any case where, by reason of reduction of grant referred to in paragraph (2)(a) or (b), no grant was paid in respect of the application, except where the eligible works in respect of which the application was approved were executed to a satisfactory standard.

PART III

APPLICABLE AMOUNTS

Applicable amounts

- 12.** Subject to regulation 13 (polygamous marriages), the weekly applicable amount of a relevant person shall be the aggregate of such of the following amounts as may apply in his case—
- (a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1(1), (2) or (3), as the case may be, of Schedule 1 (applicable amounts);
 - (b) an amount determined in accordance with paragraph 2 of Schedule 1 in respect of any child or young person who is a member of his family, except a child or young person whose capital, if determined in accordance with Chapter VI of Part IV (income and capital) in like manner as for the relevant person, except where otherwise provided, would exceed £5,000;
 - (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 Part II of Schedule 1 (family premium);
 - (d) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

Polygamous marriages

- 13.** Where a relevant person is a member of a polygamous marriage, his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—
- (a) the highest amount applicable to him and one of his partners determined in accordance with paragraph 1(3) of Schedule 1 as if he and that partner were a couple;
 - (b) an amount equal to the difference between the amounts specified in sub-paragraphs (3)(b) and (1)(b) of paragraph 1 of Schedule 1 in respect of each of his other partners;

- (c) an amount determined in accordance with paragraph 2 of Schedule 1 in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household, except a child or young person whose capital, if determined in accordance with Chapter VI of Part IV (income and capital) in like manner as for the relevant person, except where otherwise provided, would exceed £5,000;
- (d) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part II of Schedule 1 (family premium);
- (e) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

PART IV

INCOME AND CAPITAL

CHAPTER I

GENERAL

Income and capital of relevant person

14. Where a relevant person is a member of a family, the income and capital of any member of that family shall, except where otherwise provided, be treated as the income and capital of that person.

Determination of income and capital of members of relevant person's family and of a polygamous marriage

15.—(1) The income and capital of a relevant person's partner and, subject to paragraph (2) and to regulation 29 (modifications in respect of child and young person), the income of a child or young person which by virtue of regulation 14 is to be treated as income and capital of the relevant person shall be determined in accordance with the following provisions of this Part in like manner as for the relevant person; and any reference to the relevant person shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to his partner or that child or young person.

(2) Regulations 22(2) and 24(2), so far as they relate to paragraphs 1 to 10 of Schedule 2 (sums to be disregarded in the determination of earnings), shall not apply to a child or young person.

(3) Where a relevant person or the partner of that person is married polygamously to two or more members of his household—

- (a) the relevant person shall be treated as possessing capital and income belonging to each such member and the income of any child or young person who is one of that member's family; and
- (b) the income and capital of that member or, as the case may be, the income of that child or young person shall be determined in accordance with the following provisions of this Part in like manner as for the relevant person or, as the case may be, as for any child or young person who is a member of his family.

CHAPTER II

INCOME

Determination of income on a weekly basis

16.—(1) The income of a relevant person shall be determined on a weekly basis by aggregating—

- (a) his average weekly earnings from employment as an employed earner, determined in accordance with this Chapter and Chapter III of this Part,
- (b) his average weekly earnings from employment as a self-employed earner, determined in accordance with this Chapter and Chapter IV of this Part,
- (c) his average weekly income other than earnings, determined in accordance with this Chapter and Chapter V of this Part,
- (d) the weekly tariff income determined under regulation 37 (determination of tariff income from capital).

(2) For the purposes of paragraph (1) “income” includes income derived under regulations 27 and 28 (capital treated as income and notional income).

Average weekly earnings of employed earners

17. Where the income of a relevant person consists of or includes earnings from employment as an employed earner, his average weekly earnings from such employment shall be determined by reference to his earnings from such employment over the period of 52 weeks immediately preceding the application or, where his earnings fluctuate, over such other lesser period immediately preceding the application as may enable his average weekly earnings to be determined more accurately.

Average weekly earnings of self-employed earners

18. Where the income of a relevant person consists of or includes earnings from employment as a self-employed earner, his average weekly earnings from such employment shall be determined by reference to his earnings from such employment over such period, not exceeding 52 weeks immediately preceding the application, as is appropriate in order that his average weekly earnings over such period may be determined accurately.

Average weekly income other than earnings

19. Any part of a relevant person’s income which does not consist of earnings shall be determined by reference to such income over such period not exceeding 52 weeks immediately preceding the application as is appropriate in order that his average weekly income over such period may be determined accurately.

Determination of weekly income

20. For the purposes of regulations 17 to 19 (average weekly income), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in any other case, by dividing the amount of the payment by the number equal to the number of days in the period to which it relates and multiplying the quotient by 7.

CHAPTER III
EMPLOYED EARNERS

Earnings of employed earners

21.—(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 relevant person on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only insofar as it represents loss of income;
- (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the relevant person’s employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the employer in respect of—
 - (i) travelling expenses incurred by the relevant person between his home and place of employment,
 - (ii) expenses incurred by the relevant person under arrangements made for the care of a member of his family owing to the relevant person’s absence from home;
- (g) any award of compensation made under section 68(2) or 71(2)(a) of the Employment Protection (Consolidation) Act 1978⁽³⁹⁾ (remedies and compensation for unfair dismissal);
- (h) any such sum as is referred to in section 18(2) of the Social Security (Miscellaneous Provisions) Act 1977⁽⁴⁰⁾ (certain sums to be earnings for social security purposes);
- (i) any statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982⁽⁴¹⁾ or statutory maternity pay under Part V of the 1986 Act.

(2) Earnings shall not include—

- (a) any payment in kind;
- (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
- (c) any occupational pension.

Determination of net earnings of employed earners

22.—(1) For the purposes of regulation 17 (average weekly earnings of employed earners), the earnings of a relevant person derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings as determined under paragraph (3).

(2) There shall be disregarded from a relevant person’s net earnings, any sum, where applicable, specified in paragraphs 1 to 11 of Schedule 2.

⁽³⁹⁾ 1978 c. 44; section 68(2) was amended by section 21 and Schedule 3, paragraph 21 of the Employment Act 1982 (c. 46); section 71(2) was amended by sections 5 and 21, Schedule 3, paragraph 22 and Schedule 4 of the Employment Act 1982.

⁽⁴⁰⁾ 1977 c. 5; section 18(2) was amended by section 159 and Schedule 16, paragraph 29 of the Employment Protection (Consolidation) Act 1978 (c. 44) and by section 86(2) of, and Schedule 10, Part IV, paragraph 75 and Schedule 11 to, the Social Security Act 1986 (c. 50).

⁽⁴¹⁾ 1982 c. 24.

(3) For the purposes of paragraph (1) net earnings shall be determined by taking into account the gross earnings of the relevant person from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
 - (i) income tax,
 - (ii) primary Class 1 contributions under the 1975 Act⁽⁴²⁾; and
- (b) one-half of any sum paid by the relevant person by way of a contribution towards an occupational or personal pension scheme.

CHAPTER IV

SELF-EMPLOYED EARNERS

Earnings of self-employed earners

23. “Earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and shall include any allowance paid under section 2 of the Employment and Training Act 1973⁽⁴³⁾ to the relevant person for the purpose of assisting him in carrying on his business.

Determination of net profit of self-employed earners

24.—(1) For the purposes of regulation 18 (average weekly earnings of self-employed earners) the earnings of a relevant person 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 or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975⁽⁴⁴⁾, 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 1975 Act determined in accordance with regulation 25 (deduction of tax and contributions for self-employed earners), and
 - (ii) one-half of any qualifying premium payable.

(2) There shall be disregarded from a relevant person's net profit, any sum, where applicable, specified in paragraphs 1 to 11 of Schedule 2.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (9) applies, be determined by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (5) 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 1975 Act,

⁽⁴²⁾ See sections 1(2) and 4 of the Social Security Act 1975 (c. 14); section 4 was amended by the Social Security Pensions Act 1975 (c. 60), Schedule 4, paragraph 36(a), the Education (School-leaving Dates) Act 1976 (c. 5), section 2(4), the Social Security Act 1979 (c. 18), section 14(1), the Social Security and Housing Benefits Act 1982 (c. 24), Schedule 5, the Social Security Act 1985 (c. 53), sections 7(1) and (2) and 8(1) and the Social Security Act 1986, sections 74(1)(a) and (2) and Schedule 10, paragraph 104 and S.I. 1990/321, article 2.

⁽⁴³⁾ 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19).

⁽⁴⁴⁾ S.I. 1975/529.

determined in accordance with regulation 25 (deduction of tax and contributions for self-employed earners); and

(c) one-half of any qualifying premium payable.

(4) For the purposes of paragraph (1)(b) the net profit of the employment shall be determined by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(5) Subject to paragraph (6), no deduction shall be made under paragraph (3)(a) or (4), in respect of—

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

(6) A deduction shall be made under paragraph (3)(a) or (4) 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.

(7) The local housing authority shall not make a deduction in respect of any expenses under paragraph (3)(a) or (4) where, given the nature and the amount of the expense, it has been unreasonably incurred.

(8) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (3)(a) or (4) 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.

(9) Where a relevant person 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 1975 Act,
 determined in accordance with regulation 25 (deduction of tax and contributions for self-employed earners); and
- (b) one-half of any qualifying premium payable.

(10) For the avoidance of doubt where a relevant person is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed earner 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.

(11) In this regulation “qualifying premium” means any premium or other consideration payable under an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision for the relevant person of a life annuity in old age or the provision of an annuity for his partner or for any one or more of his dependants and in respect of which relief for income tax may be given.

Deduction of tax and contributions for self-employed earners

25.—(1) The amount to be deducted in respect of income tax under regulation 24(1)(b)(i), (3)(b)(i) or (9)(a)(i) (determination of net profit of self-employed earners) shall be determined on the basis of the amount of chargeable income and as if that income were assessable to income tax at the basic rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988⁽⁴⁵⁾ (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the amount of the personal relief deductible under this paragraph shall be calculated on a pro-rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 24(1)(b)(i), 3(b)(ii) or (9)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 7(1) or, as the case may be, (4) of the 1975 Act⁽⁴⁶⁾ except where the relevant person’s chargeable income is less than the amount for the time being specified in section 7(5) of that Act⁽⁴⁷⁾ (small earnings exception); and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 9 of that Act⁽⁴⁸⁾ (Class 4 contributions recoverable under Tax Acts) in respect of profits or gains equal to the amount of that income.

(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 (3)(a) or, as the case may be, (4) of regulation 24;
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

CHAPTER V

OTHER INCOME

Determination of income other than earnings

26.—(1) For the purposes of regulation 19 (average weekly income other than earnings), the income of a relevant person which does not consist of earnings to be taken into account shall, subject to paragraphs (2) and (3), be his gross income and any capital treated as income under regulation 27 (capital treated as income).

⁽⁴⁵⁾ 1988 c. 1; section 257 was amended by section 25(1) of the Finance Act 1988 (c. 39), and see section 35 and Schedule 3, paragraph 5.

⁽⁴⁶⁾ Section 7(1) was amended by section 2(4) of the Education (School-leaving Dates) Act 1976 (c. 5), section 17(1) of the Health and Social Security Act 1984 (c. 48), and article 3 of S.I. 1990/321.

⁽⁴⁷⁾ Section 7(5) was amended by article 3 of S.I. 1989/26.

⁽⁴⁸⁾ Section 9 was amended by section 4 of, and Schedule 5 to, the Social Security Pensions Act 1975 (c. 60), by the Social Security (Contributions) Act 1982 (c. 2), section 1 and by article 5 of S.I. 1990/321.

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

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

(4) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 21(2) applies (payments not earnings).

Capital treated as income

27. Any payment received under an annuity, and any earnings to the extent that they are not a payment of income, shall be treated as income.

Notional income

28.—(1) A relevant person shall be treated as possessing income of which he has deprived himself for the purpose of increasing the amount of grant.

(2) Except in the case of a discretionary trust or a trust derived from a payment made in consequence of a personal injury, any income which would have become available to the relevant person upon application being made, but which has not been acquired by him, shall be treated as possessed by the relevant person but only from the date on which it could be expected to have been acquired had an application been made.

(3) Any payment of income, other than a payment of income made under the Macfarlane Trust, the MacFarlane (Special Payments) Trust or the Independent Living Fund, made—

- (a) to a third party in respect of a relevant person being a single person or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single person or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, eligible rates or rent to which regulation 9 or 10 of the Housing Benefit (General) Regulations 1987 refers⁽⁴⁹⁾, or both, of that single person or, as the case may be, of any member of that family or is used for any personal community charge or collective community charge contribution for which that relevant person or member is liable;
- (b) to a relevant person being a single person or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single person or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

(4) Where—

- (a) a relevant person performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area; and
- (c) it is not the case that the means of that person are insufficient for him to pay or to pay more for the service,

the local housing authority shall treat the relevant person as possessing such earnings (if any) as is reasonable for that employment; but this paragraph shall not apply to a relevant person who is engaged by a charitable or voluntary body or is a volunteer if it is reasonable for him to provide his services free of charge.

(5) In the case of an application to which section 126(3)(b) of the Act applies (renovation grants relating to two or more dwellings), there shall be treated as possessed by the relevant person 90 per

⁽⁴⁹⁾ S.I. 1987/1971; the relevant amending instrument is S.I. 1988/1971.

cent. of the amount of the aggregate of the rents of each of the dwellings to be provided, other than any in respect of which an owner-occupation certificate accompanies the application, which may reasonably be expected to be obtained on a letting on the open market under an assured tenancy and assuming that no premium is paid.

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

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

- (a) an amount in respect of income tax equivalent to an amount determined by applying to those earnings the basic rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal relief) as is appropriate to his circumstances; but if the assessment period is less than a year the amount of the personal relief deductible under this sub-paragraph shall be determined on a pro-rata basis;
- (b) an amount in respect of primary Class 1 contributions payable under the 1975 Act in respect of those earnings; and
- (c) one-half of any sum payable by the relevant person by way of a contribution towards an occupational or personal pension scheme.

(8) In paragraph (3) the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.

Modifications in respect of children and young persons

29.—(1) Where the income of a child or young person determined in accordance with the foregoing provisions of this Part exceeds the amount included under Schedule 1 in the determination of the relevant person’s applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any, the excess shall not be treated as income of the relevant person.

(2) Where the capital of a child or young person, if determined in accordance with Chapter VI in like manner as for the relevant person, except where otherwise provided, would exceed £5,000, any income of that child or young person shall not be treated as income of the relevant person.

(3) In determining the net earnings or net profit of a child or young person there shall be disregarded (in addition to any sum which falls to be disregarded under paragraphs 11 and 12) any sum specified in paragraphs 13 and 14 of Schedule 2.

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

CHAPTER VI

CAPITAL

Determination of capital

30.—(1) The capital of a relevant person to be taken into account shall, subject to paragraph (2), be the whole of his capital determined in accordance with this Part and any income treated as capital under regulation 32 (income treated as capital).

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

Disregard of capital of child or young person

31. The capital of a child or young person who is a member of the relevant person's family shall not be treated as capital of the relevant person.

Income treated as capital

32.—(1) Any bounty derived from employment to which paragraph 6 of Schedule 2 applies and paid at intervals of at least one year shall be treated as capital.

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

(3) Any holiday pay which is not earnings under regulation 21(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 3, 5, 8, 14, 25 or 26 of Schedule 4, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the relevant person's account.

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

(6) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment which is made under the MacFarlane Trust, the MacFarlane (Special Payments) Trust or the Independent Living Fund, shall be treated as capital.

Determination of capital in the United Kingdom

33. Capital which a relevant person possesses in the United Kingdom shall be determined—

(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 incumbrance 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 of the application, 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.

Determination of capital outside the United Kingdom

34. Capital which a relevant person possesses in a country outside the United Kingdom shall be determined—

- (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 incumbrance secured on it.

Notional capital

35.—(1) A relevant person shall be treated as possessing capital of which he has deprived himself for the purpose of increasing the amount of grant.

(2) Except in the case of—

- (a) a discretionary trust; or
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 4,

any capital which would have become available to the relevant person upon application being made, but which has not been acquired by him, shall be treated as possessed by him but only from the date on which it could be expected to have been acquired had an application been made.

(3) Any payment of capital, other than a payment of capital made under the Macfarlane Trust, the MacFarlane (Special Payments) Trust or the Independent Living Fund, made—

- (a) to a third party in respect of a single relevant person or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single person or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, eligible rates or rent to which regulation 9 or 10 of the Housing Benefit (General) Regulations 1987 refers, or both, of that single person or, as the case may be, of any member of that family or is used for any personal community charge or collective community charge contribution for which that relevant person or member is liable;
- (b) to a single relevant person or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single person or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

(4) Where a relevant person 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 may 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 30 (determination of capital), be disregarded; and
- (b) he shall, subject to paragraph (5), 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 determining that amount as if it were actual capital which he does possess.

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

(6) Where a relevant person is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of this Chapter shall apply for the purposes of determining its amount as if it were actual capital which he does possess.

(7) In paragraph (3) the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use but does not include school uniforms, or clothing or footwear used solely for sporting activities.

Capital jointly held

36. Except where a relevant person possesses capital which is disregarded under regulation 35(4) (notional capital) where a relevant person and one or more persons are beneficially entitled in possession to any capital asset 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 determining the amount of capital which the relevant person is treated as possessing as if it were actual capital which the relevant person does possess.

Determination of tariff income from capital

37.—(1) Where the relevant person’s capital determined in accordance with this Part exceeds £5000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £5000.

(2) Notwithstanding paragraph (1) where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly tariff income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 32 (income treated as capital).

PART V

STUDENTS

Interpretation

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

“contribution” means any contribution in respect of the income of any other person which a Minister of the Crown or an education authority as defined in regulation 46 of the Housing Benefit (General) Regulations 1987⁽⁵⁰⁾ takes into account in assessing the amount of the student’s grant and by which the amount is, as a consequence, reduced;

“course of study” means any full-time or part-time course of study or sandwich course whether or not a grant is made for attending it;

“full-time student” includes a student on a sandwich course;

“grant” means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary;

“grant income” means—

- (a) any income by way of a grant;
- (b) any contribution whether or not it is paid;

⁽⁵⁰⁾ S.I. 1987/1971, amended by S.I. 1988/1971.

“sandwich course” has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1988(51);

“student” means a person who is attending a course of study at an educational establishment including a registered student.

Treatment of students

39. These Regulations shall have effect in relation to students subject to the following provisions of this Part.

Determination of grant income

40.—(1) The amount of a student’s grant income to be taken into account shall, subject to paragraph (2), be the whole of his grant income.

(2) There shall be excluded from a student’s grant income any payment—

- (a) intended to meet tuition fees or examination fees;
- (b) intended to meet the cost of special equipment for a student on a course which began before 1st September 1986 in architecture, art and design, home economics, landscape architecture, medicine, music, ophthalmic optics, orthoptics, physical education, physiotherapy, radiography, occupational therapy, dental hygiene, dental therapy, remedial gymnastics, town and country planning and veterinary science or medicine;
- (c) in respect of the student’s disability;
- (d) intended to meet additional expenditure connected with term time residential study away from the student’s educational establishment;
- (e) on account of the student maintaining a home at a place other than that at which he resides during his course;
- (f) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of him;
- (g) intended to meet the cost of books and equipment (other than special equipment) or, in the case of a full-time student, if not so intended an amount equal to £234 towards such costs;
- (h) intended to meet travel expenses incurred as a result of his attendance on the course.

Relationship with amounts to be disregarded under Schedule 3

41. No part of a student’s grant income shall be disregarded under paragraph 13 of Schedule 3 (sums to be disregarded in the determination of income other than earnings).

Other amounts to be disregarded

42. For the purposes of ascertaining income other than grant income, any amounts intended for any expenditure specified in regulation 40(2) (determination of grant income), necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 40(2) on like expenditure.

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

Disregard of contribution

43. Where the relevant person or his partner is a student and the income of one is taken into account for the purposes of assessing a contribution to the student's grant, an amount equal to the contribution shall be disregarded for the purposes of determining the income of the one liable to make that contribution.

24th May 1990

Chris Patten
Secretary of State for the Environment

24th May 1990

David Hunt
Secretary of State for Wales

We consent,

5th June 1990

John Taylor
Kenneth Carlisle
Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE 1

Regulations 12 and 13

APPLICABLE AMOUNTS

Regulations 12(a) and (b) and 13(a) to (c)

PART I

PERSONAL ALLOWANCES

1. The amounts specified in column (2) below in respect of each person or couple specified in column (1) shall be the amounts specified for the purposes of regulations 12(a) and 13(a) and (b)–

(1) Person or couple	(2) Amount
(1) Single person aged–	
(a) (a) less than 25; (1)	(a) £28.80;
(b) (b) not less than 25.	(b) £36.70.
(2) Lone parent aged–	
(a) (a) less than 18; (2)	(a) £28.80;
(b) (b) not less than 18.	(b) £36.70.
(3) Couple–	
(a) (a) where both (3) members are aged less than 18;	(a) £43.80;
(b) (b) where at least one member is aged not less than 18.	(b) £57.60.

2. The amounts specified in column (2) below in respect of each person specified in column (1) shall be the amounts specified for the purposes of regulations 12(b) and 13(c)–

(1) Child or Young Person	(2) Amount
Person aged–	
(a) (a) less than 11;	(a) £12.35;
(b) (b) not less than 11 but less than 16;	(b) £18.25;
(c) (c) not less than 16 but less than 18;	(c) £21.90;
(d) (d) not less than 18.	(d) £28.80.

Regulations 12(c) and 13(d)

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

PART II

FAMILY PREMIUM

3. The amount for the purposes of regulations 12(c) and 13(d) in respect of a family of which at least one member is a child or young person shall be £7.35.
Regulations 12(d) and 13(e)

PART III

PREMIUMS

4. Except as provided in paragraph 5, the premiums specified in Part IV of this Schedule shall for the purposes of regulations 12(d) and 13(e) be applicable to a relevant person who satisfies the condition specified in paragraphs 7 to 14 in respect of that premium.

5. Subject to paragraph 6, where a relevant person satisfies the condition in respect of more than one premium in this Part of this Schedule, only one premium shall be applicable to him and, if they are different amounts, the higher or highest amount shall apply.

6.—(1) The severe disability premium to which paragraph 13 applies may be applicable in addition to any other premium which may apply under this Schedule.

(2) The disabled child premium to which paragraph 14 applies may be applicable in addition to any other premium which may apply under this Schedule.

Lone parent premium

7. The condition is that the relevant person is a lone parent.

Pensioner premium for persons under 75

8. The condition is that the relevant person—

- (a) is a single person or lone parent aged not less than 60 but less than 75; or
- (b) has a partner and is, or his partner is, aged not less than 60 but less than 75.

Pensioner premium for persons 75 and over

9. The condition is that the relevant person—

- (a) is a single person or lone parent aged not less than 75 but less than 80; or
- (b) has a partner and is, or his partner is, aged not less than 75 but less than 80.

Higher pensioner premium

10.—(1) Where the relevant person is a single person or a lone parent, the condition is that—

- (a) he is aged not less than 80; or
- (b) he is aged less than 80 but not less than 60, and the additional condition specified in paragraph 12(1)(a) is satisfied.

(2) Where the relevant person has a partner, the condition is that—

- (a) he or his partner is aged not less than 80; or

- (b) he or his partner is aged less than 80 but not less than 60 and the additional condition specified in paragraph 12(1)(a) is satisfied.

Disability premium

11. The condition is that—

- (a) where the relevant person is a single or a lone parent, he is aged less than 60 and the additional condition specified in paragraph 12 is satisfied; or
- (b) where the relevant person has a partner, either—
 - (i) the relevant person is aged less than 60 and the additional condition specified in paragraph 12(1)(a) or (b) is satisfied by him, or
 - (ii) his partner is aged less than 60 and the additional condition specified in paragraph 12(1)(a) is satisfied by his partner.

Additional condition for the higher pensioner and disability premiums

12.—(1) Subject to sub-paragraph (2) and paragraphs 15 and 16, the additional condition referred to in paragraphs 10 and 11 is that either—

- (a) the relevant person or, as the case may be, his partner—
 - (i) is in receipt of one or more of the following benefits: attendance allowance, mobility allowance, mobility supplement, an invalidity pension under section 15 of the 1975 Act⁽⁵²⁾ or severe disablement allowance under section 36 of that Act⁽⁵³⁾ but in the case of invalidity pension or severe disablement allowance only where it is paid in respect of him, or
 - (ii) was in receipt of either mobility allowance or invalidity pension under section 15 of the 1975 Act when entitlement to that benefit ceased either on account of the maximum age for this payment being reached or the payment of a retirement pension under that Act and, if the mobility allowance or invalidity pension was payable to his partner, the partner is still a member of the family, or
 - (iii) was in receipt of attendance allowance which is no longer in payment solely on account of the relevant person or, as the case may be, his partner having been or having been treated as undergoing treatment for a period of more than 4 weeks by virtue of regulation 5 of the Social Security (Attendance Allowance) (No. 2) Regulations 1975⁽⁵⁴⁾, or
 - (iv) is provided by the Secretary of State with an invalid carriage or other vehicle under section 5(2) of the National Health Service Act 1977⁽⁵⁵⁾ (other services) or, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978⁽⁵⁶⁾ (provision of services) or receives payments by way of grant from the Secretary of State under paragraph 2 of Schedule 2 to that 1977 Act (additional provisions as to vehicles) or, in Scotland, under that section 46, or

⁽⁵²⁾ Section 15 was amended by the Social Security Pensions Act 1975 (c. 60), Schedule 4, paragraph 40, the Social Security Act 1979 (c. 18), Schedule 1, paragraph 1 and Schedule 3, paragraph 7, the Social Security and Housing Benefits Act 1982 (c. 24), Schedule 4, Part I, paragraph 10 and the Social Security Act 1986 (c. 50), Schedule 10, Part V, paragraph 83.

⁽⁵³⁾ Section 36 was substituted by the Health and Social Security Act 1984 (c. 48), section 11; and subsection (4A) of that section inserted by the Social Security Act 1985 (c. 53), Schedule 4, paragraph 3 and amended by the Social Security Act 1989 (c. 24), Schedule 8, paragraph 6 and Schedule 9.

⁽⁵⁴⁾ S.I. 1975/598; the relevant amending instrument is S.I. 1983/1015.

⁽⁵⁵⁾ 1977 c. 49; section 5(2) was amended and subsection (2A) added by the Public Health Laboratory Service Act 1979 (c. 23), section 1, and subsection (2B) added by section 9 of the Health and Social Security Act 1984 (c. 48).

⁽⁵⁶⁾ 1978 c. 29.

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- (v) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948(57) (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; or
 - (b) the circumstances of the relevant person fall, and have fallen, in respect of a continuous period of not less than 28 weeks, within sub-paragraph (5) or, if he was in Northern Ireland for the whole or part of that period, within one or more of the comparable Northern Irish provisions.
- (2) For the purposes of sub-paragraph (1)(a)(v), 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.
- (3) For the purposes of sub-paragraph (1)(b), once the higher pensioner premium or the disability premium is applicable to a relevant person by virtue of his satisfying the additional condition specified in that provision, if he then ceases, for a period of 8 weeks or less, to be treated as incapable for work for the purposes of the provisions specified in that provision he shall, on again becoming so incapable of work, immediately thereafter be treated as satisfying the condition in sub-paragraph (1) (b).
- (4) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to a relevant person by virtue of his satisfying the additional condition specified in that provision, he shall continue to be treated as satisfying that condition for any period spent by him in undertaking a course of training provided under section 2 of the Employment and Training Act 1973(58) or for any period during which he is in receipt of a training allowance.
- (5) For the purposes of sub-paragraph (1)(b) the circumstances of a relevant person fall within this sub-paragraph if—
- (a) he provides evidence of incapacity in accordance with regulation 2 of the Social Security (Medical Evidence) Regulations 1976(59) (evidence of incapacity for work) in support of a claim for sickness benefit, invalidity pension or severe disablement allowance within the meaning of sections 14, 15 or 36 of the 1975 Act, provided that an adjudication officer has not determined he is not incapable of work, or
 - (b) he is in receipt of statutory sick pay within the meaning of Part I of the Social Security and Housing Benefits Act 1982(60).

Severe disability premium

- 13.—(1) Subject to paragraphs 15 and 16, the condition is that the relevant person is a severely disabled person.
- (2) For the purposes of sub-paragraph (1), a relevant person shall be treated as a severely disabled person if, and only if—
- (a) in the case of a single person or lone parent—
 - (i) he is in receipt of attendance allowance, and

(57) 1948 c. 29; section 29 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1(2); the Mental Health (Scotland) Act 1960 (c. 61), sections 113 and 114 and Schedule 4; the Local Government Act 1972 (c. 70), Schedule 23, paragraph 2; the Employment and Training Act 1973 (c. 50), Schedule 3, paragraph 3; the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 6 and the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 10, Part I.

(58) 1973 c. 50; section 2 was substituted by the Employment Act 1988 (c. 19), section 25.

(59) S.I. 1976/615; relevant amending instruments are S.I. 1982/699 and 1987/409.

(60) Section 37 was amended by the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), section 22(2) and the Social Security Act 1986 (c. 50), section 37 and Schedule 11.

- (ii) subject to sub-paragraph (3), he has no non-dependants aged 18 or over residing with him, and
- (iii) an invalid care allowance under section 37 of the 1975 Act⁽⁶¹⁾ is not in payment to anyone in respect of caring for him;
- (b) in the case of a relevant person who has a partner—
 - (i) the relevant person is in receipt of attendance allowance, and
 - (ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, all the partners of that marriage are in receipt of such an allowance, and
 - (iii) subject to sub-paragraph (3), the relevant person has no non-dependants aged 18 or over residing with him, and either an invalid care allowance is payable to someone in respect of caring for only one of a couple or, in the case of a polygamous marriage for one or more but not all the partners of the marriage, or else such an allowance is not in payment to anyone in respect of caring for either member of a couple or any partner of a polygamous marriage.
- (3) For the purposes of sub-paragraphs (2)(a)(ii) and (2)(b)(iii) no account shall be taken of either—
 - (a) a person receiving attendance allowance; or
 - (b) a boarder.

Disabled child premium

14.—(1) Subject to paragraphs 15 and 16, the condition is that a child or young person for whom the relevant person or a partner of his is responsible and who is a member of the relevant person’s household—

- (a) has no capital or capital which, if determined in accordance with Part IV in like manner as for the relevant person except where otherwise provided, would not exceed £5,000; and
- (b) is in receipt of attendance allowance or mobility allowance or both 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
- (c) is blind or treated as blind within the meaning of paragraph 12.

(2) In paragraph (1), “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⁽⁶²⁾.

Persons in receipt of concessionary payments

15. For the purposes of determining whether a premium is applicable to a person under paragraphs 12 to 14, 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.

Persons in receipt of benefit

16. 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.

⁽⁶¹⁾ S.I. 1975/555; relevant amending instruments are S.I. 1977/1693 and 1987/1683.

⁽⁶²⁾ 1982 c. 24.

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PART IV

AMOUNTS OF PREMIUMS SPECIFIED IN PART III

Premium	Amount
16. —	(1) £9.70.
(1) Lone parent premium	
(2) Pensioner premium for persons aged under 75—	(2)
(a) (a) where the relevant person satisfies the condition in paragraph 8(a);	(a) (a) £11.80;
(b) (b) where the relevant person satisfies the condition in paragraph 8(b).	(b) (b) £17.95.
(3) Pensioner premium for persons aged 75 and over—	(3)
(a) (a) where the relevant person satisfies the condition in paragraph 9(a);	(a) (a) £14.40;
(b) (b) where the relevant person satisfies the condition in paragraph 9(b).	(b) (b) £21.60.
(4) Higher pensioner premium—	(4)
(a) (a) where the relevant person satisfies the condition in paragraph 10(1)(a) or (b);	(a) (a) £17.05;
(b) (b) where the relevant person satisfies the condition in paragraph 10(2)(a) or (b).	(b) (b) £24.25.
(5) Disability premium—	(5)
(a) (a) where the relevant person satisfies the condition in paragraph 11(a);	(a) (a) £15.40;
(b) (b) where the relevant person satisfies the condition in paragraph 11(b).	(b) (b) £22.10.
(6) Severe disability premium—	(6)
(a) (a) where the relevant person satisfies the condition in paragraph 13(2)(a);	(a) (a) £28.20.
(b) (b) where the relevant person satisfies the condition in paragraph 13(2)(b)—	(b) (i) £28.20;

Premium	Amount
(i) in a case where there is someone in receipt of an invalid care allowance;	
(ii) in a case where there is no-one in receipt of such an allowance.	(ii) £56.40.
(7) Disabled child premium	(7) £15.40 in respect of each child or young person in respect of whom the condition specified in paragraph 14 is satisfied.

SCHEDULE 2

Regulations 22(2), 24(2) and 29(3)

SUMS TO BE DISREGARDED IN THE DETERMINATION OF EARNINGS

1. In the case of a relevant person who has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged—

(a) any earnings paid or due to be paid in respect of that employment which has been terminated—

(i) by way of retirement but only if on retirement he is entitled to a retirement pension under the 1975 Act, or would be so entitled if he satisfied the contribution conditions;

(ii) otherwise than by retirement, except earnings to which regulation 21(1)(b) to (e) and (g) to (i) (earnings of employed earners) applies;

(b) any earnings paid or due to be paid in respect of that employment which has been interrupted except earnings to which regulation 21(1)(d) and (e) applies.

2. In the case of a relevant person who has been engaged in part-time employment as an employed earner or had the employment been in Great Britain would have been so engaged, any earnings paid or due to be paid in respect of that employment which has been terminated or interrupted except earnings to which regulation 21(1)(e) applies.

3.—(1) In a case to which this paragraph applies, £15; but notwithstanding regulation 15 (determination of income and capital of members of a relevant person's family and of a polygamous marriage) if this paragraph applies to a relevant person it shall not apply to his partner except where, and to the extent that, the earnings of the relevant person which are to be disregarded under this paragraph are less than £15.

(2) This paragraph applies where the relevant person's applicable amount includes an amount by way of the disability premium or severe disability premium under Schedule 1 (applicable amounts).

(3) This paragraph applies where—

(a) the relevant person is a member of a couple and his applicable amount would, but for the higher pensioner premium under Schedule 1 being applicable, include an amount by way of the disability premium under that Schedule; and

(b) he or his partner is under the age of 60 and at least one is engaged in employment.

(4) This paragraph applies where—

(a) the relevant person's applicable amount includes an amount by way of the higher pensioner premium under Schedule 1; and

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- (b) the relevant person or, if he is a member of a couple, either he or his partner has attained the age of 60; and
 - (c) immediately before attaining that age he or, as the case may be, he or his partner was engaged in employment and the relevant person would have been entitled by virtue of subparagraph (2) to a disregard of £15; and
 - (d) he or, if he is a member of a couple, he or his partner has continued in employment.
- (5) This paragraph applies where—
- (a) the relevant person is a member of a couple and his applicable amount would include an amount by way of the disability premium under Schedule 1, but for—
 - (i) the pensioner premium for persons aged 75 and over under that Schedule being applicable, or
 - (ii) the higher pensioner premium under that Schedule being applicable; and
 - (b) he or his partner has attained the age of 75 but is under the age of 80 and the other is under the age of 60 and at least one member of the couple is engaged in employment.
- (6) This paragraph applies where—
- (a) the relevant person is a member of a couple and he or his partner has attained the age of 75 but is under the age of 80 and the other has attained the age of 60; and
 - (b) immediately before the younger member attained that age either member was engaged in employment and the relevant person would have been entitled by virtue of subparagraph (5) to a disregard of £15; and
 - (c) either he or his partner has continued in employment.
- (7) For the purposes of this paragraph, no account shall be taken of any period not exceeding eight consecutive weeks occurring on or after the date on which the relevant person or, if he is a member of a couple, he or his partner attained the age of 60 during which either or both ceased to be engaged in employment.
4. If an amount by way of a lone parent premium under Schedule 1 is included in the determination of the relevant person's applicable amount, £15.
5. In a case where paragraph 3 does not apply to the relevant person and he is one of a couple and a member of that couple is in employment, £10; but, notwithstanding regulation 15 (determination of income and capital of members of relevant person's family and of a polygamous marriage), if this paragraph applies to a relevant person it shall not apply to his partner except where, and to the extent that, the earnings of the relevant person which are to be disregarded under this paragraph are less than £10.
- 6.—(1) In a case to which neither paragraph 3 nor 4 applies to the relevant person, £15 of earnings derived from one or more employments as—
- (a) a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Acts 1947 to 1959⁽⁶³⁾;
 - (b) an auxiliary coastguard in respect of coast rescue activities;
 - (c) a person engaged part-time in the manning or launching of a life-boat;
 - (d) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979⁽⁶⁴⁾;

⁽⁶³⁾ 1947 c. 41, 1951 c. 27, 1959 c. 44.

⁽⁶⁴⁾ S.I. 1979/591; Part I of Schedule 3 was substituted by S.I. 1980/1975.

but, notwithstanding regulation 15 (determination of income and capital of members of relevant person's family and of a polygamous marriage), if this paragraph applies to a relevant person it shall not apply to his partner except to the extent specified in sub-paragraph (2).

- (2) If the relevant person's partner is engaged in employment—
- (a) specified in sub-paragraph (1), so much of his earnings as would not in aggregate with the amount of the relevant person's earnings disregarded under this paragraph exceed £15;
 - (b) other than one specified in sub-paragraph (1), so much of his earnings from that employment up to £10 as would not in aggregate with the applicant's earnings disregarded under this paragraph exceed £15.

7. Where the relevant person is engaged in one or more employments specified in paragraph 6(1), but his earnings derived from such employments are less than £15 in any week and he is also engaged in any other employment so much of his earnings from that other employment, up to £5 if he is a single person, or up to £10 if he has a partner, as would not in aggregate with the amount of his earnings disregarded under paragraph 6 exceed £15.

8. In a case to which none of the paragraphs 3 to 7 applies, £5.

9. Any amount or the balance of any amount which would fall to be disregarded under paragraph 17, 18 or 27 of Schedule 3 had the relevant person's income which does not consist of earnings been sufficient to entitle him to the full disregard thereunder.

10. Where a relevant person is in receipt of income support, his earnings.

11. Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

12. Where a payment of earnings is made in a currency other than sterling, any banking charges or commission payable in converting that payment into sterling.

13. Any earnings of a child or young person except earnings to which paragraph 14 applies.

14. In the case of earnings of a young person who has ceased full-time education for the purposes of section 2 of the Child Benefit Act 1975 (meaning of child)⁽⁶⁵⁾ and who is engaged in remunerative work—

- (a) if an amount by way of a disabled child premium under Schedule 1 is included in the determination of his applicable amount, £15;
- (b) in any other case, £5.

15. In this Schedule "part-time employment" means employment in which the person is engaged on average for less than 24 hours a week.

SCHEDULE 3

Regulation 26(2)

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

1. Any amount paid by way of tax on income which is to be taken into account under regulation 26 (determination of income other than earnings).

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

⁽⁶⁵⁾ 1975 c. 61; section 2 was amended by sections 4 and 8 of, and Schedule 5, Part I to, the Social Security Act 1980 (c. 30), section 70 of the Social Security Act 1986 (c. 50) and section 4(3) of the Social Security Act 1988 (c. 7).

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

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 28(4) (notional income).

3. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

4. Where a relevant person is in receipt of income support, the whole of his income.

5. Any mobility allowance under section 37A of the 1975 Act⁽⁶⁶⁾.

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

- (a) any payment specified in paragraph 5 or 8;
- (b) income support.

7. Any mobility supplement under article 26A of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983⁽⁶⁷⁾ (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983⁽⁶⁸⁾ or any payment intended to compensate for the non-payment of such a supplement.

8. Any attendance allowance.

9. Any payment to the relevant person as holder of the Victoria Cross or of the George Cross or any analogous payment.

10. Any sum in respect of a course of study attended by a child or young person payable by virtue of Regulations made under section 81 of the Education Act 1944⁽⁶⁹⁾ (assistance by means of scholarships or otherwise), or by virtue of section 2(1) of the Education Act 1962⁽⁷⁰⁾ (awards for courses of further education), or section 49 of the Education (Scotland) Act 1980⁽⁷¹⁾ (power to assist persons to take advantage of educational facilities).

11. In the case of a relevant person participating in arrangements for training made under section 2 of the Employment and Training Act 1973⁽⁷²⁾ or attending a course at an employment rehabilitation centre established under that section—

- (a) any travelling expenses reimbursed to the relevant person;
- (b) if he receives an allowance under section 2(2)(d) of that Act, such amount, if any, of that allowance expressed to be a living away from home allowance;
- (c) any training premium,

but this paragraph, except insofar as it relates to a payment under sub-paragraph (a), (b) or (c), does not apply to any part of any allowance under section 2(2)(d) of that Act.

12. Any Job Start Allowance payable under section 2(1) of the Employment and Training Act 1973.

13. Subject to paragraph 33, £10 of any charitable payment or of any voluntary payment made or due to be made (whether or not so made) at regular intervals other than a payment which is made by

⁽⁶⁶⁾ Section 37A was inserted by section 22(1) of the Social Security Pensions Act 1975 (c. 60), and amended by the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 64, the Social Security Act 1979 (c. 18), section 3 and the Social Security Act 1986 (c. 50), section 71 and Schedule 11.

⁽⁶⁷⁾ S.I. 1983/883; article 26A was added by S.I. 1983/1116 and amended by S.I. 1983/1521, 1986/592 and 1989/156.

⁽⁶⁸⁾ S.I. 1983/686; article 25A was added by S.I. 1983/1164 and amended by S.I. 1986/628 and 1989/415.

⁽⁶⁹⁾ 1944 c. 31, amended by S.I. 1964/490.

⁽⁷⁰⁾ 1962 c. 12; section 2(1) was substituted by section 19 of, and Schedule 5 to, the Education Act 1980 (c. 20).

⁽⁷¹⁾ 1980 c. 44.

⁽⁷²⁾ 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19).

a person for the maintenance of any member of his family or his former partner or of his children or a payment to which paragraph 34 applies; and, for the purposes of this paragraph, where a number of such charitable or voluntary payments falls to be taken into account in any one week they shall be treated as though they were one such payment.

14. Subject to paragraph 33, £10 of any of the following, namely

- (a) war disablement pension or war widow's pension or a payment made to compensate for the non-payment of such a pension;
- (b) a pension paid under the social security scheme of a country outside Great Britain and which either—
 - (i) is analogous to a war disablement pension, or
 - (ii) is paid to a war widow in respect of a person's death but is otherwise analogous to such a pension;
- (c) a pension paid 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, to victims of National Socialist persecution.

15.—(1) Any income derived from capital to which the relevant person is or is treated under regulation 36 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraphs 1, 2, 3, 5, 8, 14, 25 or 26 of Schedule 4.

(2) Income derived from capital disregarded under paragraphs 3(a), 5, 25 or 26 of Schedule 4 but only to the extent of

- (a) any mortgage payments or payment of rates made in respect of the dwelling or buildings, or
- (b) any standard community charge, or community water charge under the Abolition of Domestic Rates (Scotland) Act 1987(73), which the relevant person is liable to pay in respect of the dwelling or building,

in the period during which that income accrued.

16. Where a relevant person receives income under an annuity purchased with a loan which satisfies the following conditions—

- (a) that the loan was made as part of a scheme under which not less than 90% of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in this paragraph referred to as "the annuitants") who include the person to whom the loan was made;
- (b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;
- (c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;
- (d) that the loan was secured on a dwelling in Great Britain and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling; and
- (e) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid,

the amount, calculated on a weekly basis, equal to—

- (i) where, or in so far as, section 369 of the Income and Corporation Taxes Act 1988(74) (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction

(73) 1987 c. 47.

(74) 1988 c. 1.

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of a sum equal to income tax on such payments at the basic rate for the year of assessment in which the payment of interest becomes due,

- (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

17. Where the relevant person makes a parental contribution in respect of a student attending a course at an establishment in the United Kingdom or undergoing education in the United Kingdom, which contribution has been assessed for the purposes of calculating—

- (a) under regulations made in exercise of the powers conferred by section 1 of the Education Act 1962⁽⁷⁵⁾, that student's award under that section;
- (b) that student's award under section 2 of that Act; or
- (c) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980⁽⁷⁶⁾, that student's bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section,

an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

18.—(1) Where the relevant person is the parent of a student aged under 25 in advanced education who either—

- (a) is not in receipt of any award or grant in respect of that education; or
- (b) is in receipt of an award under section 2 of the Education Act 1962 (discretionary awards) or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

and the relevant person makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 17, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

(2) For the purposes of sub-paragraph (1), the amount shall be equal to—

- (a) the weekly amount of the payments; or
- (b) the amount by way of a personal allowance for a single person under 25 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b),

whichever is less.

19. Any payment made to the relevant person by a child or young person or a non-dependant.

20. Where the relevant person occupies a dwelling as his home which is also occupied by a person other than one to whom paragraph 19 refers and that person is contractually liable to make payments in respect of his occupation of the dwelling to the relevant person—

- (a) £4 of any payment made by that person; and
- (b) a further £7.35, where that payment is inclusive of an amount for heating.

21. Any income in kind.

22. Any income which is payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of that income.

(75) 1962 c. 12; sections 1 and 2 were substituted by section 19 and Schedule 5 of the Education Act 1980 (c. 20) and section 1(3) amended by section 4 of the Education (Grants and Awards) Act 1984 (c. 11) and see the Education (Mandatory Awards) Regulations 1988 (S.I. 1988/1360).

(76) 1980 c. 44 and see the Education Authority Bursaries (Scotland) Regulations 1986 (S.I. 1986/1227).

23.—(1) Any payment made to the relevant person in respect of a person who is a member of his family—

- (a) in accordance with a scheme approved by the Secretary of State under section 50(4) of the Adoption Act 1958⁽⁷⁷⁾ or, as the case may be, section 51 of the Adoption (Scotland) Act 1978⁽⁷⁸⁾ (schemes for payments of allowances to adopters);
- (b) which is payment made by a local authority, in pursuance of section 34(6) or, as the case may be, section 50 of the Children Act 1975⁽⁷⁹⁾ (contributions to a custodian towards the cost of the accommodation and maintenance of a child);

to the extent specified in sub-paragraph (2).

(2) In the case of a child or young person—

- (a) to whom regulation 29(2) applies (capital in excess of £5,000), the whole payment;
- (b) to whom that regulation does not apply, so much of the weekly amount of the payment as exceeds the amount included under Schedule 1 in the determination of the relevant person's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any.

24. Any payment made by a local authority to the relevant person with whom a person is boarded out by virtue of arrangements made under section 21(1)(a) of the Child Care Act 1980⁽⁸⁰⁾ or, as the case may be, section 21 of the Social Work (Scotland) Act 1968⁽⁸¹⁾ or by a voluntary organisation under section 61 of the 1980 Act or by a care authority under regulation 9 of the Boarding-out and Fostering of Children (Scotland) Regulations 1985⁽⁸²⁾ (provision of accommodation and maintenance for children in care).

25. Any payment made by a health authority, local authority or voluntary organisation to the relevant person in respect of a person who is not normally a member of the relevant person's household but is temporarily in his care.

26. Any payment made by a local authority under section 1, 27, or 29 of the Child Care Act 1980 or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968 (duty of local authorities to promote welfare of children and powers to grant financial assistance to persons under 21 in, or formerly in, their care).

27. An amount equal to any maintenance payment made by the relevant person to his former partner or in respect of his children other than children who are members of his household.

28. Any payment received under an insurance policy taken out to insure against the risk of being unable to maintain repayments on a loan for the purchase of the dwelling which the relevant person occupies as his only or main residence and secured on that dwelling to the extent that it does not exceed the amount calculated, on a weekly basis, of that repayment.

29. Any payment of income which by virtue of regulation 32 (income treated as capital) is to be treated as capital.

30. Any social fund payment.

31. Any payment under paragraph 2 of Schedule 6 to the 1986 Act (pensioners' Christmas bonus).

32. Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

⁽⁷⁷⁾ 1958 c. 5 (7 & 8 Eliz. 2); subsection (4) of section 50 was added by section 32 of the Children Act 1975 (c. 72).

⁽⁷⁸⁾ 1978 c. 28.

⁽⁷⁹⁾ 1975 c. 72, as amended by section 64 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).

⁽⁸⁰⁾ 1980 c. 5, amended by Schedule 2, paragraph 49 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41).

⁽⁸¹⁾ 1968 c. 49.

⁽⁸²⁾ S.I. 1985/1799.

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33. The total of a relevant person's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 15(3) (determination of income and capital of members of relevant person's family and of a polygamous marriage) to be disregarded under paragraphs 13 and 14 shall in no case exceed £10 per week.

34. Any payment made under the Macfarlane Trust, the MacFarlane (Special Payments) Trust or the Independent Living Fund.

35. Any housing benefit and any housing benefit in the form of a community charge rebate.

36. Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

37. Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983**(83)**.

38. Any resettlement benefit which is paid to the relevant person by virtue of regulation 3 of the Social Security (Hospital In-Patients) Amendment (No. 2) Regulations 1987**(84)**.

39. Any community charge benefit.

40. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988**(85)** or section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987**(86)** (reduction of liability for personal community charges).

41. Where the relevant person occupies a dwelling as his only or main residence and that dwelling is also occupied by a boarder who makes payments to the relevant person in respect of his occupation—

- (a) £20.00 of any payment made by that boarder; and
- (b) if the payment exceeds £20.00, 50% of the excess.

42. Any special war widows payment made under—

- (a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865**(87)**;
- (b) the Royal Warrant dated 19th February 1990 amending the Schedule to the Army Pensions Warrant 1977**(88)**;
- (c) the Queen's Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917**(89)**;
- (d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980**(90)**;
- (e) the Orders dated 19th February 1990 amending Orders made on 12th December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980**(91)**;

and any analogous payments made by the Secretary of State for Defence to any person who is not a person entitled under the provisions mentioned in sub-paragraphs (a) to (e) of this paragraph.

(83) S.I. 1983/1399; relevant amending instruments are S.I. 1984/282 and 1986/1293.

(84) S.I. 1987/1683.

(85) 1988 c. 41; section 13A was inserted by the Local Government and Housing Act 1989 (c. 42), Schedule 5, paragraph 5.

(86) 1987 c. 47; section 9A was inserted by section 143 of the Local Government and Housing Act 1989.

(87) 1865 c. 73. Copies of the Order are available from: Ministry of Defence, NPC2, Room 317 Archway Block South, Old Admiralty Building, Spring Gardens, London SW1A 2BE.

(88) Army Code No. 13045 published by HMSO.

(89) 1917 c. 51. Queen's Regulations for the Royal Air Force are available from HMSO.

(90) 1980 c. 9. Copies of the Regulations are available from: Ministry of Defence at the address given in footnote (e) above.

(91) Army Code 60589 published by HMSO.

43. Any payment to a juror or witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

SCHEDULE 4

Regulation 30(2)

CAPITAL TO BE DISREGARDED

1. The dwelling or building to which the application relates.

2. Any one dwelling normally occupied by the relevant person as his only or main residence 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; but, notwithstanding regulation 15 (determination of income and capital of members of relevant person's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

3. Any dwelling which the relevant person intends to occupy as his only or main residence and—

- (a) which he acquires for occupation, and intends to occupy as such residence within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the relevant person to obtain possession and commence occupation, or
- (b) in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings, whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation, or
- (c) to which essential repairs or alterations are required in order to render it fit for such occupation, for such period as is necessary to enable those repairs or alterations to be carried out,

but, notwithstanding regulation 15 (determination of income and capital of members of relevant person's family and of a polygamous marriage) only one dwelling shall be disregarded under this paragraph.

4.—(1) Subject to sub-paragraph (2), any sum directly attributable to the proceeds of sale of any dwelling formerly occupied by the relevant person as his only or main residence to the extent to which it is to be used for the purchase of either—

- (a) the dwelling or building to which the application relates, or
 - (b) any dwelling, other than that to which the application relates, which is intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the relevant person to complete the purchase.
- (a) (2) (a) Sub-paragraph (1) shall not apply where a dwelling is disregarded under paragraph 26;
- (b) sub-paragraph (1)(b) shall not apply where a dwelling is disregarded under paragraph 3.

5. Any dwelling occupied in whole or in part—

- (a) by a partner, close relative, grandparent, grandchild, uncle, aunt, nephew or niece of any member of the family of the relevant person where that person is either aged 60 or over or incapacitated;
- (b) by the former partner of the relevant person as his only or main residence; but this provision shall not apply where the former partner is a person from whom the relevant person is estranged or divorced.

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6. Where a relevant person is in receipt of income support, the whole of his capital.

7. Any reversionary interest.

8. The assets of any business owned in whole or in part by the relevant person and for the purposes of which he is engaged as a self-employed earner, or if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

9.—(1) Any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of,—

(a) any payment specified in paragraph 5, 7 or 8 of Schedule 3;

(b) an income-related benefit or supplementary benefit, family income supplement under the Family Income Supplements Act 1970⁽⁹²⁾ or housing benefit under Part II of the Social Security and Housing Benefits Act 1982⁽⁹³⁾.

(2) In this paragraph, “supplementary benefit” has the same meaning as in the 1986 Act.

10.—(1) Subject to sub-paragraph (2), any sum—

(a) paid to the relevant person in consequence of damage to or loss of his only or main residence or any personal possession and intended for its repair or replacement; or

(b) acquired by the relevant person (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvement to his only or main residence,

which is to be used for the intended purpose, for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to effect the repairs, replacement or improvement.

(2) A sum to which sub-paragraph 1(b) applies shall be disregarded under this paragraph to the extent only that it is not for carrying out works to which the application relates.

11. Any sum—

(a) deposited with a housing association as defined in section 1(1) of the Housing Associations Act 1985⁽⁹⁴⁾ as a condition of occupying the only or main residence;

(b) which was so deposited and which is to be used for the purchase of another dwelling being the only or main residence, for the period of 26 weeks or such longer period as may be reasonable in the circumstances to enable the relevant person to complete the purchase.

12. Any personal possessions except those which have been acquired by the relevant person with the intention of reducing his capital in order to increase the amount of grant.

13. The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

14.—(1) Subject to sub-paragraph (2), where the funds of a trust are derived from a payment made in consequence of any personal injury to the relevant person the value of the trust fund and the value of the right to receive any payment under that trust, for a period of 2 years or such longer period as is reasonable in the circumstances, beginning on the date of the payment, but, for the purposes of regulations 12, 13 and 29(2) (applicable amounts, polygamous marriages and modifications in respect of children and young persons), in determining the capital of a child or young person there shall be no limit as to the period of disregard under this sub-paragraph.

⁽⁹²⁾ 1970 c. 55.

⁽⁹³⁾ 1982 c. 24.

⁽⁹⁴⁾ 1985 c. 69.

(2) Any value to which sub-paragraph (1) applies shall be disregarded under this paragraph to the extent only that it does not represent funds or a payment which are for carrying out works to which the application relates.

15. The value of the right to receive any income under a life interest or from a life rent.

16. The value of the right to receive any income which is disregarded under paragraph 9 of Schedule 2 or paragraph 22 of Schedule 3.

17. The surrender value of any policy of life insurance.

18. Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

19. Any payment made under section 1, 27 or 29 of the Child Care Act 1980⁽⁹⁵⁾ or, as the case may be, section 12, 24, or 26 of the Social Work (Scotland) Act 1968⁽⁹⁶⁾ (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in or formerly in their care).

20. Any social fund payment.

21. Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988⁽⁹⁷⁾ (mortgage interest payment under deduction of tax) on a payment of relevant loan interest for the purpose of acquiring an interest in the only or main residence or carrying out repairs or improvements to that residence.

22. Any capital which by virtue of regulation 27 (capital treated as income) is to be treated as income.

23. Where any payment of capital is made in currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

24. Any payment made under the Macfarlane Trust, the MacFarlane (Special Payments) Trust or the Independent Living Fund and any sum derived from such a payment.

25.—(1) Where a relevant person has ceased to occupy what was formerly the dwelling occupied as the only or main residence following his estrangement or divorce from his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling, or where the dwelling is occupied by the former partner who is a lone parent, for so long as it is so occupied.

(2) In this paragraph “dwelling” includes 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.

26. Any premises where the relevant person is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.

27. Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

28. Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983.

29. The value of the right to receive an occupational pension.

30. The value of the right to receive any rent.

⁽⁹⁵⁾ 1980 c. 5.

⁽⁹⁶⁾ 1968 c. 49.

⁽⁹⁷⁾ 1988 c. 1.

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31. Any payment in kind made by a charity or under the MacFarlane (Special Payments) Trust.
32. Any payment not exceeding £200 made under section 2 of the Employment and Training Act 1973(98) (functions of the Secretary of State) as a training bonus to a person participating in arrangements for training made under that section.
33. Any housing benefit, or housing benefit in the form of a community charge rebate.
34. Any community charge benefit.
35. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988(99) or section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987(100) (reduction of liability for personal community charge).
- 36.—(1) Subject to sub-paragraph (2), any grant made to the relevant person in accordance with a scheme made under section 129 of the Housing Act 1988(101) or section 66 of the Housing (Scotland) Act 1988(102) (schemes for payments to assist local housing authority and local authority tenants to obtain other accommodation) which is to be used—
- (a) to purchase premises intended for occupation as his only or main residence; or
 - (b) to carry out repairs or alterations which are required to render premises fit for such occupation,
- for a period of 26 weeks from the date on which he received such a grant or such longer period as is reasonable in the circumstances to enable the purchase, repairs or alterations to be completed and the relevant person to commence such occupation.
- (2) A grant to which sub-paragraph (1) applies shall be disregarded under this paragraph to the extent only that it is not for carrying out works to which the application relates.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for reduction of the amount of renovation grant and disabled facilities grant which may be paid by local housing authorities in respect of applications by owner-occupiers and tenants under Part VIII of the Local Government and Housing Act 1989.

Part I contains general provisions affecting the citation, commencement and interpretation of the Regulations (regulations 1 to 5) and makes provision in regard to the circumstances in which a person is or is not to be treated as responsible for another person and in which a person is or is not to be treated as being a member of the same household as a person (“relevant person”) whose financial resources are to be taken into account in determining whether the amount of the grant is to be reduced and, if so, by how much (regulations 6 and 7). It also sets out what comprises the applicable amount

(98) 1973 c. 50; section 2 was substituted by the Employment Act 1988 (c. 19), section 25.

(99) 1988 c. 41; section 13A was inserted by the Local Government and Housing Act 1989 (c. 42), Schedule 5, paragraph 5.

(100) 1987 c. 47; section 9A was inserted by section 143 of the Local Government and Housing Act 1989.

(101) 1988 c. 50.

(102) 1988 c. 43.

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and the amount to be taken to be the financial resources in respect of an application, by reference to which any reduction in the amount of grant is determined (regulations 8 and 9).

Part II specifies the amount by which a grant is to be reduced in various circumstances (regulations 10 and 11).

Part III and Schedule 1 provide for the determination of the applicable amount of a relevant person, and with respect to polygamous marriages (regulations 12 and 13).

Part IV provides for the determination of the income and capital of a relevant person, the earnings of employed and self-employed earners and the treatment of income other than earnings (including notional income); sums to be disregarded are set out in Schedules 2 and 3. Determination of capital is also dealt with; capital to be disregarded is set out in Schedule 4 (regulations 14 to 37).

Part V provides for the treatment of students (regulations 38 to 43).