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STATUTORY INSTRUMENTS

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**1990 No. 1774**

**SOCIAL SECURITY**

**The Family Credit (General)  
Amendment No. 2 Regulations 1990**

*Made* - - - - - *28th August 1990*  
*Laid before Parliament* *6th September 1990*  
*Coming into force* - - - *2nd October 1990*

The Secretary of State for Social Security, in exercise of powers conferred by sections 22(8), (9) (a) and (b) and 84(1) of the Social Security Act 1986(1) and section 166(1) to (3) of the Social Security Act 1975(2) and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it(3) hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Family Credit (General) Amendment No. 2 Regulations 1990 and shall come into force on 2nd October 1990.

(2) In these Regulations “the General Regulations” means the Family Credit (General) Regulations 1987(4).

**Amendment of regulation 34 of the General Regulations**

2. In regulation 34 of the General Regulations (notional capital), in paragraph (1) from the words “except where” to the end there shall be inserted the words

“except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant; or
- (b) to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 34A (diminishing notional capital rule).”.

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(1) 1986 c. 50; section 84(1) is an interpretation provision and is cited because of the meaning assigned to the words “prescribed” and “regulations”.

(2) 1975 c. 14; and section 166(1) to (3) is applied by section 83(1) of the Social Security Act 1986 (c. 50).

(3) See the Social Security Act 1986, section 61(1)(b) and (10). The Social Security Act 1989 (c. 24), Schedule 8, added a definition of “regulations” to section 61(10) of the Act of 1986.

(4) S.I.1987/1973; the relevant amending instruments are S.I. 1988/660, 1970, 1990/574.

### Insertion of regulation 34A into the General Regulations

3. After regulation 34 of the General Regulations (notional capital) there shall be inserted the following regulation—

#### “Diminishing notional capital rule

**34A.**—(1) Where a claimant is treated as possessing capital under regulation 34(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a benefit week which is subsequent to—
  - (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied; or
  - (ii) a week which follows that relevant week and which satisfies those conditions,
 shall be reduced by an amount determined under paragraph (3);
- (b) in the case of a benefit week in respect of which paragraph (1)(a) does not apply but where—
  - (i) that week is a week subsequent to the relevant week, and
  - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied,
 shall be reduced by the amount determined under paragraph (4).

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

- (a) he is entitled to family credit; and
- (b) but for regulation 34(1), he would have been entitled to an additional amount of family credit in that benefit week.

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

- (a) the additional amount of family credit to which the claimant would have been entitled; and
- (b) the additional amount, if any, of housing benefit to which, but for regulation 43(1) of the Housing Benefit (General) Regulations 1987<sup>(5)</sup> (notional capital), the claimant would have been entitled in respect of the benefit week in which the date of the last claim for family credit falls; and
- (c) the additional amount, if any, of any community charge benefit to which, but for regulation 33(1) of the Community Charge Benefits (General) Regulations 1989<sup>(6)</sup> (notional capital), the claimant would have been entitled in respect of the benefit week in which the date of the last claim for family credit falls.

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to family credit in the relevant week but for regulation 34(1) and in such a case the amount shall be equal to the aggregate of—

- (a) the amount of family credit to which the claimant would have been entitled in the relevant week but for regulation 34(1); and
- (b) the additional amount, if any, of housing benefit to which, but for regulation 43(1) of the Housing Benefit (General) Regulations 1987 the claimant would have been

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<sup>(5)</sup> S.I. 1987/1971.

<sup>(6)</sup> S.I. 1989/1321.

entitled in respect of the benefit week in which the first day of the relevant week falls; and

- (c) the additional amount, if any, of any community charge benefit to which, but for regulation 33(1) of the Community Charge Benefits (General) Regulations 1989 the claimant would have been entitled in respect of the benefit week in which the first day of the relevant week falls.

(5) The amount determined under paragraph (4) shall be re-determined under that paragraph if the claimant makes a further claim for family credit and the conditions in paragraph (6) are satisfied, and in such a case—

- (a) sub-paragraphs (a), (b) and (c) of paragraph (4) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to paragraph (7), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.

(6) The conditions are that—

- (a) a further claim is made 22 or more weeks after—
  - (i) the first day of the relevant week;
  - (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the first day of the relevant subsequent week which last occurred;

whichever last occurred; and

- (b) the claimant would have been entitled to family credit but for regulation 34(1).

(7) The amount as re-determined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.

(8) For the purposes of this regulation—

- (a) “benefit week” has the meaning prescribed in regulations 16 (date of entitlement under an award) and 27 (family credit) of the Social Security (Claims and Payments) Regulations 1987(7) except where it appears in paragraphs (3)(b) and (c) and (4)(b) and (c) where it has the meaning prescribed in regulation 2(1) of the Housing Benefit (General) Regulations 1987 (interpretation) or regulation 2(1) of the Community Charge Benefits (General) Regulations 1989 (interpretation) as the case may be;
- (b) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 34(1)—
  - (i) was for the first time taken into account for the purpose of determining his entitlement to family credit; or
  - (ii) was taken into account on a subsequent occasion for that purpose other than in respect of either a benefit week to which paragraph (2) applies or a further claim to which paragraph (5) applies;and, where more than one benefit week is identified by reference to heads (i) and (ii) of this sub-paragraph, the later or latest such benefit week;
- (c) “relevant subsequent week” means the benefit week in which any award of family credit in respect of the further claim referred to in paragraph (6)(a) would, but

for regulation 34(1), have commenced, but it shall not be earlier than the twenty-seventh week after the week in which the existing amount took effect.”.

### **Amendment of Schedule 2 to the General Regulations**

**4.** In Schedule 2 to the General Regulations (sums to be disregarded in the calculation of income other than earnings), after paragraph 43 there shall be added the following paragraphs—

“**44.**—(1) Any payment or repayment made—

- (a) as respects England and Wales, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988<sup>(8)</sup> (travelling expenses and health service supplies);
- (b) as respects Scotland, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988<sup>(9)</sup> (travelling expenses and health service supplies).

(2) Any payment or repayment made by the Secretary of State for Health, the Secretary of State for Scotland or the Secretary of State for Wales which is analogous to a payment or repayment mentioned in sub-paragraph (1).

**45.** Any payment made under regulation 9 to 11 or 13 of the Welfare Food Regulations 1988<sup>(10)</sup> (payments made in place of milk tokens or the supply of vitamins).

**46.** Any payment made either by the Secretary of State for the Home Department or by the Secretary of State for Scotland under a scheme established to assist relatives and other persons to visit persons in custody.”.

### **Amendment of Schedule 3 to the General Regulations**

**5.** In Schedule 3 to the General Regulations (capital to be disregarded)—

(a) in paragraph 6 at the end there shall be added the following sub-paragraph—

“(2) The assets of any business owned in whole or in part by the claimant where—

- (a) he has ceased to be engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; and
- (b) he intends to become re-engaged as a self-employed earner in that business as soon as he recovers or is able to be re-engaged in that business;

for a period of 26 weeks from the date on which the claimant last ceased to be engaged in that business, or, if it is unreasonable to expect him to become re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so re-engaged.”;

(b) for paragraph 13 there shall be substituted the following paragraph—

“**13.** Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant, the value of the trust fund and the value of the right to receive any payment under that trust.”;

(c) after paragraph 39, there shall be added the following paragraphs—

“**40.**—(1) Any payment or repayment made—

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<sup>(8)</sup> S.I. 1988/551.

<sup>(9)</sup> S.I. 1988/546.

<sup>(10)</sup> S.I. 1988/536, the relevant amending instrument is S.I. 1990/3.

- (a) as respects England and Wales, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988 (travelling expenses and health service supplies);
- (b) as respects Scotland, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988 (travelling expenses and health service supplies);

but only for a period of 52 weeks from the date of receipt of the payment or repayment.

(2) Any payment or repayment made by the Secretary of State for Health, the Secretary of State for Scotland or the Secretary of State for Wales which is analogous to a payment or repayment mentioned in sub-paragraph (1); but only for a period of 52 weeks from the date of receipt of the payment or repayment.

**41.** Any payment made under regulation 9 to 11 or 13 of the Welfare Food Regulations 1988 (payments made in place of milk tokens or the supply of vitamins), but only for a period of 52 weeks from the date of receipt of the payment.

**42.** Any payment made either by the Secretary of State for the Home Department or by the Secretary of State for Scotland under a scheme established to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of receipt of the payment.

**43.** Any arrears of special war widows payment which is disregarded under paragraph 43 of Schedule 2 (sums to be disregarded in the calculation of income other than earnings)<sup>(11)</sup>, but only for a period of 52 weeks from the date of receipt of the arrears.”.

Signed by authority of the Secretary of State for Social Security.

28th August 1990

*Gillian Shephard*  
Parliamentary Under-Secretary of State,  
Department of Social Security

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(11) Paragraph 43 was added by S.I. 1990/574, regulation 14 (f).

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

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## EXPLANATORY NOTE

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

These Regulations further amend the Family Credit (General) Regulations 1987 in the following respects—

- (a) they provide for the reduction of notional capital (regulation 3);
- (b) they provide for the disregard of certain income, including travelling expenses, National Health Service payments and payments in place of milk tokens or the supply of vitamins (regulation 4);
- (c) they provide for the disregard of certain capital; they extend the provisions under which assets of a business may be disregarded, remove the two year time limit on the disregard of funds held on trust and which arise from payments made as a result of personal injury and they disregard payments of travelling expenses, National Health Service payments, payments in place of milk tokens or the supply of vitamins and arrears of certain war widows payments (regulation 5).