
STATUTORY INSTRUMENTS

1991 No. 2887

The Disability Working Allowance (General) Regulations 1991

PART V

INCOME AND CAPITAL

CHAPTER VI

CAPITAL

Capital limit

31. For the purposes of section 22(6) of the Act as it applies to disability working allowance (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.

Calculation of capital

32.—(1) For the purposes of Part II of the Act as it applies to disability working allowance, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 30 (income treated as capital).

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

Disregard of capital of child or young person

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

Income treated as capital

34.—(1) 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.

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

(3) Any charitable or voluntary payment which is not made or is not due to be made at regular intervals, other than a payment which is made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust or the Independent Living Fund shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4, 6, 13 or 26 to 30 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 claimant's account.

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

(6) Any maintenance payment other than one to which regulation 18(2) (normal weekly income other than earnings) applies shall be treated as capital.

Calculation of capital in the United Kingdom

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

- (a) except in a case to which sub-paragraph (b) applies, at its current market or surrender value less—
 - (i) where there would be expenses attributable to sale, 10 per cent.; and
 - (ii) the amount of any 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 claim, at the price which it would have realised on that 1st July had it been purchased on the last day of that issue;
 - (ii) in any other case, at its purchase price.

Calculation of capital outside the United Kingdom

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

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

Notional capital

37.—(1) Subject to regulation 38, a claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to disability working allowance or increasing the amount of that benefit 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 38 (diminishing notional capital rule).
- (2) Except in the case of—
- (a) a discretionary trust;
 - (b) a trust derived from a payment made in consequence of a personal injury; or
 - (c) any loan which would be obtainable only if secured against capital disregarded under Schedule 4,

any capital which would become available to the claimant upon application being made but which has not been acquired by him shall be treated as possessed by him.

(3) Any payment of capital, other than a payment of capital made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust or the Independent Living Fund, made—

- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall be treated as possessed by that single claimant or member of the family to the extent that it is used for his food, ordinary clothing or footwear, household fuel, or housing costs or is used for any personal community charge or collective community charge contribution for which that member is liable; and in this sub-paragraph 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;
 - (b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant or member to the extent that it is kept by him or used on behalf of any member of the family.
- (4) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he shall be treated as if he were such sole owner or partner and in such a case—
- (a) the value of his holding in that company shall, notwithstanding regulation 32 (calculation 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 calculating that amount as if it were actual capital which he does possess.
- (5) For so long as the claimant undertakes activities in the course of the business of the company, the amount he is treated as possessing under paragraph (4) shall be disregarded.
- (6) Where a claimant is treated as possessing capital under any of paragraphs (1) to (4) the foregoing provisions of this Chapter shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.
- (7) For the avoidance of doubt a claimant is to be treated as possessing capital under paragraph (1) only if the capital of which he has deprived himself is actual capital and not capital which he is treated as possessing under regulation 39.

Diminishing notional capital rule

- 38.**—(1) Where a claimant is treated as possessing capital under regulation 37(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,
 - (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 disability working allowance; and
 - (b) but for regulation 37, he would have been entitled to an additional amount of disability working allowance 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 disability working allowance to which the claimant would have been entitled; and
 - (b) if the claimant would, but for regulation 43(1) of the Housing Benefit (General) Regulations 1987⁽¹⁾ (notional capital), have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week in which the date of the last claim for disability working allowance falls, the amount (if any) which is equal to—
 - (i) in a case where no housing benefit is payable the amount to which he would have been entitled, or
 - (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled; and
 - (c) if the claimant would, but for regulation 33(1) of the Community Charge Benefits (General) Regulations 1989⁽²⁾ (notional capital) have been entitled to community charge benefit or to an additional amount of community charge benefit in respect of the benefit week in which the date of the last claim for disability working allowance falls, the amount (if any) which is equal to—
 - (i) in a case where no community charge benefit is payable the amount to which he would have been entitled, or
 - (ii) in any other case, the amount equal to the additional amount of community charge benefit to which he would have been entitled.
- (4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to disability working allowance in the relevant week but for regulation 37(1) and in such a case the amount shall be equal to the aggregate of—
- (a) the amount of disability working allowance to which the claimant would have been entitled in the relevant week but for regulation 37(1); and
 - (b) if the claimant would, but for regulation 43(1) of the Housing Benefit (General) Regulations 1987 (notional capital), have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week in which the first day of the relevant week falls, the amount (if any) which is equal to—
 - (i) in a case where no housing benefit is payable the amount to which he would have been entitled, or
 - (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled; and
 - (c) if the claimant would, but for regulation 33(1) of the Community Charge Benefits (General) Regulations 1989 (notional capital) have been entitled to community charge benefit or to an additional amount of community charge benefit in respect of the benefit week in which the first day of the relevant week falls, the amount (if any) which is equal to—
 - (i) in a case where no community charge benefit is payable the amount to which he would have been entitled, or
 - (ii) in any other case, the amount equal to the additional amount of community charge benefit to which he would have been entitled.

(1) S.I. 1987/1971.

(2) S.I. 1989/1321.

(5) The amount determined under paragraph (4) shall be re-determined under that paragraph if the claimant makes a further claim for disability working allowance 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”,
- (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 20 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;
- (b) the claimant would have been entitled to disability working allowance but for regulation 37(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 and disability working allowance) of the Social Security (Claims and Payments) Regulations 1987⁽³⁾ 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 37(1)—
 - (i) was for the first time taken into account for the purpose of determining his entitlement to disability working allowance; 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 disability working allowance in respect of the further claim referred to in paragraph (6)(a) would, but for regulation 37(1), have commenced, but it shall not be earlier than the twenty-seventh week after the week in which the existing amount took effect.

Capital jointly held

39. Except where a claimant possesses capital which is disregarded under regulation 37(4) (notional capital), where a claimant 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

(3) [S.I. 1987/1968](#) as amended by [S.I. 1988/522](#) and [1991/2741](#). Regulation 27 was amended by regulation 14 of [S.I. 1991/2741](#).

for the purpose of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

Calculation of tariff income from capital

40.—(1) Where the claimant’s capital calculated in accordance with this Chapter exceeds £3,000, it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £3,000 but not exceeding £16,000.

(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 income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 34 (income treated as capital).