
STATUTORY INSTRUMENTS

1992 No. 2977

**The National Assistance (Assessment
of Resources) Regulations 1992**

PART III

TREATMENT OF CAPITAL

Capital limit

20. No resident shall be assessed as unable to pay for his accommodation at the standard rate if his capital calculated in accordance with regulation 21 exceeds the amount prescribed for the purposes of section 134(1) of the Contributions and Benefits Act⁽¹⁾ (exclusions from benefit).

Calculation of capital

21.—(1) The capital of a resident 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 22.

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

Income treated as capital

22.—(1) Any bounty which would be treated as capital under paragraph (1) of regulation 48 of the Income Support Regulations⁽²⁾ (income treated as capital) 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 13 (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 5, 10 or 16 of Schedule 4, any income of a resident which is derived from capital shall be treated as capital but only from the date on which it is normally due to be paid to him.

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

(6) Any payment which would be treated as capital under paragraph (8) of regulation 48 of the Income Support Regulations⁽³⁾ (income treated as capital) shall be treated as capital.

(7) Any charitable or voluntary payment which is not made or not due to be made at regular intervals, other than one which is made under the Fund, the Macfarlane Trust, the Macfarlane

(1) See regulation 45 of the Income Support Regulations, as amended by regulation 5(2) of S.I. 1990/671. The amount prescribed is currently £8,000.

(2) Amended by regulation 11(a) of S.I. 1988/1445.

(3) As respects England and Wales, paragraph (8) was substituted by paragraph 5 of the Schedule to S.I. 1992/468.

(Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust or the Independent Living Fund, shall be treated as capital.

Calculation of capital in the United Kingdom

23.—(1) Except in a case to which paragraph (2) applies and subject to regulation 27(2), capital which a resident possesses in the United Kingdom shall be calculated at its current market or surrender value (whichever is higher), less—

- (a) where there would be expenses attributable to sale, 10 per cent; and
 - (b) the amount of any incumbrance secured on it.
- (2) Capital in the form of a National Savings Certificate—
- (a) if it was purchased from an issue the sale of which ceased before the 1st July immediately preceding the date on which the resident's accommodation was provided, shall be calculated at the price which it would have realised on that 1st July had it been purchased on the last day of that issue;
 - (b) in any other case, shall be calculated at its purchase price.

Calculation of capital outside the United Kingdom

24. Capital which a resident possesses in a country outside the United Kingdom shall be calculated in accordance with the method prescribed in regulation 50 of the Income Support Regulations (calculation of capital outside the United Kingdom).

Notional capital

25.—(1) A resident may be treated as possessing actual capital of which he has deprived himself for the purpose of decreasing the amount that he may be liable to pay for his accommodation 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 resident; or
 - (b) to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 26.
- (2) Subject to paragraph (3), a resident may be treated as possessing any payment of capital which would be treated as capital possessed by a claimant of income support under paragraph (2) or (3) of regulation 51 of the Income Support Regulations⁽⁴⁾ (notional capital).
- (3) For the purposes of paragraph (2)—
- (a) regulation 51(2) of the Income Support Regulations shall apply as if for the reference to Schedule 10 to those Regulations there were substituted a reference to Schedule 4 to these Regulations; and
 - (b) regulation 51(3)(a)(ii) of the Income Support Regulations shall apply as if for the words from “the food, ordinary” to the end of sub-paragraph (a)(ii) there were substituted the words “any item which was taken into account when the standard rate was fixed for the accommodation provided”.
- (4) A resident shall be treated as possessing any payment of capital made or due to be made to a local authority by a third party pursuant to an agreement between the local authority and the

(4) Amended by regulation 22(a) of S.I. 1988/663; regulation 12(a) of, and paragraph 4 of Schedule 1 to, S.I. 1988/1445; paragraph 7 of Schedule 1 to S.I. 1989/534; regulation 3(3)(c) of S.I. 1990/127; regulation 5(5) of S.I. 1991/1175; regulation 9 of S.I. 1991/1559; and regulation 6(5) of S.I. 1992/1101.

third party made in connection with the liability of the resident to pay the local authority for his accommodation.

(5) Where a resident is treated as possessing capital under any of paragraphs (1), (2) or (4), the foregoing provisions of this Part shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

Diminishing notional capital rule

26.—(1) Where a resident is treated as possessing capital under regulation 25(1) (for the purposes of this regulation called “reducible notional capital”), for each week or part of a week that a local authority has determined that the resident shall be liable to pay for his accommodation at a higher rate than that at which he would have been assessed as liable to pay if he had no reducible notional capital, the amount of his reducible notional capital shall be reduced by the method prescribed in paragraph (2).

(2) The local authority shall reduce the amount of the resident’s reducible notional capital by the difference between—

- (a) the higher rate referred to in paragraph (1); and
- (b) the rate which he would have been assessed as liable to pay for his accommodation for that week or part of a week if he had been assessed as possessing no reducible notional capital.

Capital jointly held

27.—(1) Where a resident and one or more other persons are beneficially entitled in possession to any capital asset except any interest in land—

- (a) they shall be treated as if each of them were entitled in possession to an equal share of the whole beneficial interest in that asset; and
- (b) that asset shall be treated as if it were actual capital.

(2) Where a resident and one or more other persons are beneficially entitled in possession to any interest in land—

- (a) the resident’s share shall be valued at an amount equal to the price which his interest in possession would realise if it were sold to a willing buyer, less than 10 per cent and the amount of any incumbrance secured solely on his share of the whole beneficial interest; and
- (b) the value of his interest so calculated shall be treated as if it were actual capital.

Calculation of tariff income from capital

28. A resident’s tariff income from capital shall be calculated in accordance with the method prescribed in regulation 53 of the Income Support Regulations(5) (calculation of tariff income from capital), except that for the purposes of this regulation the references in regulation 53(3) of the Income Support Regulations to regulations 48 and 60 of the Income Support Regulations (income treated as capital and liable relative payments treated as capital) shall be construed as references to regulations 22 and 34 of these Regulations (income treated as capital and liable relative payments treated as capital) respectively.

(5) Amended by regulation 13 of S.I. 1988/2022 and regulation 5(2) of S.I. 1990/671.