
STATUTORY INSTRUMENTS

1996 No. 2890

The Housing Renewal Grants Regulations 1996

PART II

MEANS TEST FOR OWNER-OCCUPIER'S AND TENANT'S APPLICATIONS

CHAPTER VIII: OTHER INCOME

Determination of income other than earnings

29.—(1) For the purposes of regulation 22 (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 regulations 30 (annuity treated as income) or 32 (modifications in respect of children and young persons).

(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 1992 Act 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 24(2) applies (payments which are not earnings).

Annuity treated as income

30. Any payment received under an annuity shall be treated as income.

Notional income

31.—(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) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) a personal pension scheme or retirement annuity contract where the relevant person is aged under 60,

any income which would have become available to the relevant person upon application for that income 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) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—
 - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
 - (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid: or
 - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(4) The amount of any income foregone in a case to which either paragraph (3)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined taking account of information provided by the pension fund holder in accordance with paragraph (7).

(5) The amount of any income foregone in a case to which either paragraph (3)(a)(iii) or subparagraph (3)(b) applies shall be the income that the relevant person could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available, and shall be determined in the manner specified in paragraph (4).

(6) Where a relevant person or any partner is aged not less than 60 and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, he shall where the authority so requires furnish the following information—

- (a) the name and address of the pension fund holder;
- (b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

(7) Where the pension fund holder receives from the authority a request for details concerning a personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (6) refers, the pension fund holder shall provide the authority with any information to which paragraph (8) refers.

(8) The information to which this paragraph refers is—

- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
- (b) in the case of—
 - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
 - (ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,

calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.

(9) Any payment of income, other than a payment of income made under any of the MacFarlane Trusts, the Independent Living Funds or the 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 or rent of that single person or, as the case may be, of any member of that family, or is used for any council tax, personal community charge, collective community charge contribution or water charges 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.

(10) 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;

the relevant person shall be treated as possessing such earnings (if any) as is reasonable for that employment unless the relevant person satisfies the local housing authority that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a relevant person who is engaged by a charitable or voluntary organisation or is a volunteer if it is reasonable for him in any of those cases to provide his services free of charge.

(11) In the case of an application to which section 30(2) of the Act applies (conversion application for renovation grant by owner-occupier), there shall be treated as possessed by the relevant person 90 per 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.

(12) Where a relevant person is treated as possessing any income under any of paragraphs (1) to (9) and (11), the preceding 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.

(13) Where a relevant person is treated as possessing any earnings under paragraph (10), the preceding 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 25 (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 lower rate or, as the case may be, the lower and the basic rate or the basic rate and higher 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(1) (personal reliefs) as is appropriate to his circumstances; but if the assessment period is less than a year the earnings to which the lower rate and, if appropriate, the basic rate and the higher rate of tax is to be applied and the amount of the personal relief deductible under this subparagraph shall be determined on a pro-rate basis;

(1) 1988 c. 1; section 257 was substituted by section 33 of the Finance Act 1988 (c. 39) and, as respects the year 1996–97, amended by section 74 of, and paragraph 13 of Schedule 20 and Part V(10) of Schedule 41 to, the Finance Act 1996 (c. 8). Section 259 was amended by sections 30 and 35 of, and paragraphs 1 and 5 of Schedule 3 to, the Finance Act 1988; and, as respects the year 1996–97, by paragraph 17 of Schedule 20 and Part V(10) of Schedule 41 to the Finance Act 1996.

- (b) an amount equivalent to the amount of primary Class 1 contributions which would be payable under the 1992 Act in respect of those earnings if—
 - (i) those earnings were actual earnings; and
 - (ii) the rate of any primary percentage (within the meaning of that Act) applicable to those earnings under that Act were the rate applicable at the date of application; and
 - (c) one-half of any sum payable by the relevant person by way of a contribution towards an occupational or personal pension scheme.
- (14) In paragraph (9)—
- (a) the expression “ordinary clothing or footwear” means clothing or footwear for normally daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities; and
 - (b) “rent” means eligible rent within the meaning of regulation 10(3) of the Housing Benefit (General) Regulations 1987(2) (rent), less any deductions in respect of non-dependants which fall to be made under regulation 63(3) (non-dependant deductions) of those Regulations.

Modifications in respect of children and young persons

32.—(1) Where the income of a child or young person, except income consisting of any payment of maintenance, whether under a court order or not, determined in accordance with Chapters IV to VIII 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 IX of this Part in like manner as for the relevant person (except as provided in paragraph (5)) would exceed £5,000, any income of that child or young person, except income consisting of any payment of maintenance whether under a court order or not, 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 13 and 14) any sum specified in paragraphs 15 and 16 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.

(5) There shall be treated as income any capital of a child or young person payable to him by instalments, one or more of which is outstanding at the date of the application, where the instalment or aggregate of all the instalments outstanding at that date, taken together with the amount of that child’s or young person’s other capital calculated in accordance with Chapter IX of this Part in like manner as for the relevant person, would exceed £5,000.

(2) S.I. 1987/1971; regulation 10 was amended by S.I. 1988/1971, 1990/546, 1993/317 and 1995/1644 and 2868.

(3) Regulation 63 was amended by S.I. 1990/546 and 1775, 1991/235, 387 and 503, 1992/50 and 2148, 1993/317, 963 and 1249, 1994/542 and 1995/559 and 2868.