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STATUTORY INSTRUMENTS

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**2002 No. 1792**

**SOCIAL SECURITY**

**The State Pension Credit Regulations 2002**

*Made* - - - - *11th July 2002*

*Coming into force* - - *6th October 2003*

Whereas a draft of this Instrument was laid before Parliament in accordance with section 19(2) of the State Pension Credit Act 2002 and section 11(3) of the Social Security Fraud Act 2001 and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 175 (3) to (5) of the Social Security Contributions and Benefits Act 1992<sup>(1)</sup>, sections 7(4A), 9(4A) and 11(1) and (4) of the Social Security Fraud Act 2001<sup>(2)</sup> and sections 1(5), 2(3), (4) and (6), 3(4) to (8), 4(3), 5, 6(2), 7(4) and (7), 9(4) and (5), 12(2) and (3), 15, 16(2) and 17(1) and (2) of the State Pension Credit Act 2002<sup>(3)</sup>, hereby makes the following Regulations:

**PART I**

*General*

**Citation, commencement and interpretation**

**1.—**(1) These Regulations may be cited as the State Pension Credit Regulations 2002 and shall come into force on 6th October 2003.

(2) In these Regulations—

“the Act” means the State Pension Credit Act 2002;

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992<sup>(4)</sup>;

“the appointed day” means the day appointed under section 13(3) of the Act;

“attendance allowance” means—

(a) an attendance allowance under section 64 of the 1992 Act;

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(1) 1992 c. 4; section 175 (3) to (5) is applied to provisions of the State Pension Credit Act 2002 by section 19(1) of that Act.

(2) 2001 c. 11; sections 7(4A) and 9(4A) were inserted by the State Pension Credit Act 2002, Schedule 2, paragraphs 45(2) and 46(3).

(3) 2002 c. 16.

(4) 1992 c. 4.

- (b) an increase of disablement pension under section 104 or 105 of the 1992 Act;
- (c) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part II of Schedule 8 to the 1992 Act;
- (d) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part I of Schedule 8 to the 1992 Act;
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983<sup>(5)</sup> or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

“benefit week” means the period of 7 days beginning on the day on which, in the claimant’s case, state pension credit is payable;

“care home” has the meaning it has for the purposes of the Care Standards Act 2000<sup>(6)</sup> by virtue of section 3 of that Act;

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987<sup>(7)</sup>;

“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;

“Eileen Trust” means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

“the Fund” means moneys made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by him on 24th April 1992 or, in Scotland, on 10th April 1992;

“full-time student” has the meaning prescribed in regulation 61(1) of the Income Support Regulations;

“the Income Support Regulations” means the Income Support (General) Regulations 1987<sup>(8)</sup>;

“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;

“the Independent Living Funds” means the Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1993) Fund;

“the Independent Living (Extension) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“the Independent Living (1993) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996<sup>(9)</sup>;

(5) [S.I.1983/686](#); the relevant amending Instruments are [S.I. 1983/1164](#) and [1984/1675](#).

(6) 2000 c. 14.

(7) [S.I. 1987/1968](#); the relevant amending Instrument is [S.I.1999/3108](#).

(8) [S.I. 1987/1967](#).

(9) [S.I.1996/207](#).

“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;

“the Macfarlane (Special Payments) (No. 2) Trust” means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

“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;

“patient” means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975<sup>(10)</sup>;

“pension fund holder” means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract concerned;

“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;

“prisoner” means a person who—

- (a) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
- (b) is on temporary release in accordance with the provisions of the Prison Act 1952<sup>(11)</sup> or the Prisons (Scotland) Act 1989<sup>(12)</sup>,

other than a person detained in hospital under the provisions of the Mental Health Act 1983<sup>(13)</sup>, or in Scotland, under the provisions of the Mental Health (Scotland) Act 1984<sup>(14)</sup> or the Criminal Procedure (Scotland) Act 1995<sup>(15)</sup>;

“qualifying person” means a person in respect of whom payment has been made from the Fund or the Eileen Trust;

“water charges” means—

- (a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part V of the Water Industry Act 1991<sup>(16)</sup>;
- (b) as respects Scotland, any water and sewerage charges under Schedule 11 to the Local Government Finance Act 1992<sup>(17)</sup>;

in so far as such charges are in respect of the dwelling which a person occupies as his home;

(3) In these Regulations, unless the context otherwise requires, a member of a married or unmarried couple is referred to as a partner and both members are referred to as partners.

(4) In these Regulations, unless the context otherwise requires, a reference—

- (a) to a numbered section is to the section of the Act bearing that number;
- (b) to a numbered Part is to the Part of these Regulations bearing that number;

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<sup>(10)</sup> S.I.1975/555.

<sup>(11)</sup> 1952 c. 52.

<sup>(12)</sup> 1989 c. 45.

<sup>(13)</sup> 1983 c. 20.

<sup>(14)</sup> 1984 c. 36.

<sup>(15)</sup> 1995 c. 46.

<sup>(16)</sup> 1991 c. 56.

<sup>(17)</sup> 1992 c. 14.

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

## PART II

### *Entitlement and amount*

#### **Persons not in Great Britain**

**2.** A person is to be treated as not in Great Britain if he is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, but for this purpose, no person is to be treated as not habitually resident in the United Kingdom who is—

- (a) a worker for the purposes of Council Regulation (EEC) No. 1612/68 or (EEC) No. 1251/70 or a person with a right to reside in the United Kingdom pursuant to Council Directive No. 68/360/EEC or No. 73/148/EEC; or
- (b) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951<sup>(18)</sup>, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967<sup>(19)</sup>; or
- (c) a person who has been granted exceptional leave<sup>(20)</sup> to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971<sup>(21)</sup>, or to remain in the United Kingdom by the Secretary of State; or
- (d) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999<sup>(22)</sup> and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

#### **Persons temporarily absent from Great Britain**

**3.—(1)** A person's entitlement to state pension credit during periods of temporary absence from Great Britain is to continue—

- (a) for up to 4 weeks in the circumstances specified in paragraph (2);
- (b) for up to 8 weeks in the circumstances specified in paragraph (3).
- (2) The circumstances specified in this paragraph are that—
  - (a) the period of the claimant's absence from Great Britain is unlikely to exceed 52 weeks; and
  - (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to state pension credit.
- (3) The circumstances specified in this paragraph are that—
  - (a) the period of the claimant's absence from Great Britain is unlikely to exceed 52 weeks;

<sup>(18)</sup> Cmnd. 9171.

<sup>(19)</sup> Cmnd. 3906.

<sup>(20)</sup> For a definition of "exceptional leave", see Home Office evidence to the House of Commons Home Affairs Committee, Subcommittee on Race Relations and Immigration (SCORRI), 1984-5 Session; 17th December 1984, paragraphs 44-47.

<sup>(21)</sup> 1971 c. 77.

<sup>(22)</sup> 1999 c. 33.

- (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to state pension credit;
  - (c) the claimant is accompanying a young person solely in connection with arrangements made for the treatment of that person for a disease or bodily or mental disablement; and
  - (d) those arrangements relate to treatment—
    - (i) outside Great Britain;
    - (ii) during the period whilst the claimant is temporarily absent from Great Britain; and
    - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.
- (4) In paragraph (3),
- (a) “young person” means a person who has not attained the age of 19, is treated as a child for the purposes of section 142 of the 1992 Act and lives with the claimant or the claimant’s partner; and
  - (b) “appropriately qualified” means qualified in providing medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

#### **Persons receiving treatment outside Great Britain**

4. For the purposes of the Act, a person who is not in Great Britain shall be treated as being in Great Britain during any period in which he is receiving treatment at a hospital or other institution outside Great Britain if the treatment is being provided under section 3 of the National Health Service Act 1977<sup>(23)</sup> or pursuant to arrangements made under section 23 of that Act or paragraph 13 of Schedule 2 to the National Health Service and Community Care Act 1990<sup>(24)</sup>.

#### **Persons treated as being or not being members of the same household**

- 5.—(1) A person is to be treated as not being a member of the same household as the claimant if—
- (a) he is living away from the claimant and—
    - (i) he does not intend to resume living with the claimant; or
    - (ii) his absence is likely to exceed 52 weeks except where there are exceptional circumstances (for example the person is in hospital or otherwise has no control over the length of his absence), and the absence is unlikely to be substantially more than 52 weeks;
  - (b) he or the claimant is permanently in a care home;
  - (c) he or the claimant is, or both are—
    - (i) detained in a hospital provided under section 4 of the National Health Service Act 1977<sup>(25)</sup> (special hospitals) or section 90(1) of the Mental Health (Scotland) Act 1984<sup>(26)</sup> (provision of hospitals for patients requiring special security); or
    - (ii) detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or

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(23) 1977 c. 49; the power in section 23 has been delegated to Health Authorities by regulation 2(1) of and Schedule 1 to the NHS (Functions of Health Authorities and Administrative Arrangements) (England) Regulations 2001 (S.I. 2001/747). It has been delegated to Primary Care Trusts by regulation 3(2)(a) of and Schedule 1 to the Primary Care Trust (Functions) (England) Regulations 2000 (S.I. 2000/695).

(24) 1990 c. 19.

(25) 1977 c. 48.

(26) 1984 c. 36.

- (iii) on temporary release in accordance with the provisions of the Prison Act 1952<sup>(27)</sup> or the Prison (Scotland) Act 1989<sup>(28)</sup>;
  - (d) the claimant is abroad and does not satisfy either the circumstances specified in paragraph (2) or in paragraph (3) of regulation 3 (persons temporary absent from Great Britain).
- (2) Subject to paragraph (1), partners shall be treated as members of the same household notwithstanding that they are temporarily living apart.

#### **Amount of the guarantee credit**

6.—(1) Except as provided in the following provisions of these Regulations, the standard minimum guarantee is—

- (a) £154 per week in the case of a claimant who has a partner;
  - (b) £100 per week in the case of a claimant who has no partner.
- (2) Paragraph (3) applies in the case of—
- (a) prisoners; and
  - (b) members of religious orders who are fully maintained by their order.
- (3) In a case to which this paragraph applies—
- (a) section 2(3) has effect with the substitution for the reference to the standard minimum guarantee in section 2(3)(a) of a reference to a nil amount; and
  - (b) except in the case of a person who is a remand prisoner, nil is the prescribed additional amount for the purposes of section 2(3)(b).
- (4) Except in a case to which paragraph (3) applies, an amount additional to that prescribed in paragraph (1) shall be applicable under paragraph (5) if the claimant is treated as being a severely disabled person in accordance with paragraph 1 of Part I of Schedule I.
- (5) The additional amount applicable is—
- (a) except where paragraph (b) applies, £43.45 per week if paragraph 1(1)(a), (b) or (c) of Part I of Schedule I is satisfied; or
  - (b) £86.90 per week if paragraph 1(1)(b) of Part I of Schedule I is satisfied otherwise than by virtue of paragraph 1(2)(b) of that Part and no one is entitled to and in receipt of an allowance under section 70 of the 1992 Act in respect of caring for either partner.
- (6) Except in a case to which paragraph (3) applies, an amount additional to that prescribed in paragraph (1) shall be applicable—
- (a) if paragraph 4 of Part II of Schedule I is satisfied (amount applicable for carers);
  - (b) in accordance with Part III of Schedule I (amount applicable for former claimants of income support or income-based jobseeker's allowance); or
  - (c) except where paragraph (7) applies, in accordance with Schedule II (housing costs).
- (7) This paragraph applies in the case of a person who has been detained in custody for more than 52 weeks pending trial or sentence following conviction by a court.
- (8) The amount applicable if paragraph 4 of Part II of Schedule I is satisfied is £25.35 per week, and in the case of partners, this amount is applicable in respect of each partner who satisfies that paragraph.

(27) 1952 c. 52.

(28) 1989 c. 45.

(9) In the case of a remand prisoner paragraph (6) shall apply as if sub-paragraphs (a) and (b) were omitted.

(10) In this regulation, “remand prisoner” means a person who, for a period not exceeding 52 weeks, has been detained in custody on remand pending trial or, as a condition of bail, required to reside in a hostel approved under section 27(1) of the Probation Service Act 1993<sup>(29)</sup> or, as the case may be, detained pending sentence upon conviction.

### **Savings Credit**

7.—(1) The percentage prescribed for the purposes of determining—

- (a) the maximum savings credit is 60 per cent.;
- (b) “amount A” in section 3(4) is 60 per cent.;
- (c) “amount B” in section 3(4) is 40 per cent.

(2) The amount prescribed for the savings credit threshold is £77 for a claimant who has no partner and £123 for a claimant who has a partner.

(3) The maximum savings credit shall be taken to be Nil in the case of—

- (a) prisoners; and
- (b) members of religious orders who are fully maintained by their order.

### **Special groups**

8. Schedule III shall have effect in the case of members of polygamous marriages and patients.

### **Qualifying income for the purposes of savings credit**

9. For the purposes of section 3 (savings credit), all income is to be treated as qualifying income except the following which is not to be treated as qualifying income—

- (a) working tax credit;
- (b) incapacity benefit;
- (c) a contribution-based jobseeker’s allowance within the meaning of section 1(4) of the Jobseekers Act 1995<sup>(30)</sup>;
- (d) severe disablement allowance;
- (e) maternity allowance;
- (f) payments referred to in regulation 15(5)(d) (maintenance payments).

### **Assessed income period**

10.—(1) For the purposes of section 6(2)(b) (circumstances in which the Secretary of State is prevented from specifying an assessed income period), the circumstances are—

- (a) in the case of partners, one partner is under the age of 60; or
- (b) state pension credit is awarded, or awarded at a higher rate, because an element of the claimant’s retirement provision which is due to be paid to the claimant stops temporarily.

(2) The circumstances prescribed for the purposes of section 7(4) (circumstances in which assessed amounts are deemed not to change) are that—

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<sup>(29)</sup> 1993 c. 47.

<sup>(30)</sup> 1995 c. 18.

- (a) the claimant's retirement pension scheme or annuity contract contains no provision for periodic increases in the amount payable; or
  - (b) the assessed income comprises income from capital other than income to which paragraph (7) applies.
- (3) Paragraphs (4) and (5) do not apply where the assessed amount comprises income from capital.
- (4) Where the Secretary of State is informed that the arrangements under which the assessed amount is paid contains provision—
- (a) for the payment to be increased periodically;
  - (b) for the date on which the increase is to be paid; and
  - (c) for determining the amount of the increase,
- the assessed amount shall be deemed to increase from the day specified in paragraph (5) by an amount determined by applying those provisions to the amount payable apart from this paragraph.
- (5) The day specified in this paragraph is—
- (a) if the benefit week commences on the date on which the increase is to be paid, that day;
  - (b) if sub-paragraph (a) does not apply, the first day of the next benefit week to commence after that date.
- (6) Except where paragraph (4) applies, the assessed amount shall be deemed to increase—
- (a) on the next pay day following the date in April each year on which increases under section 150(1)(c) of the Administration Act come into force; and
  - (b) by an amount produced by applying to the assessed amount the same percentage increase as that applied for the purposes of additional pensions under section 150(1)(c) and 151(1) of the Administration Act.
- (7) Where the assessed amount comprises income from capital, it shall be deemed to increase or decrease—
- (a) on the first day of the next benefit week to commence following the day on which the income increases or decreases; and
  - (b) by an amount equal to the change in the claimant's income produced by applying to his income changes made to the yields capital is deemed to produce, or to the capital amounts, specified in regulation 15(6), or to both if both are changed.
- (8) In paragraph (6), "pay day" means the day on which state pension credit is normally paid to the claimant.

### **Retirement provision in assessed income period**

- 11.** Where an element of a person's retirement provision ceases to be payable by one source but—
- (a) responsibility for that element is assumed by another source, income from both those sources shall be treated as income from the same source; or
  - (b) in consequence of that element ceasing, income of a different description becomes payable from a different source, that income shall be treated as income of the same description from the same source as the element which ceased to be payable.

### **End of assessed income period**

- 12.** An assessed income period shall end at such time as—
- (a) the claimant no longer satisfies a condition of entitlement to state pension credit;



- (b) payments of an element of the claimant's retirement provision which is due to be paid to him stops temporarily or the amount paid is less than the amount due and in consequence his award of state pension credit is superseded under section 10 of the Social Security Act 1998<sup>(31)</sup>;
- (c) a claimant who has no partner is provided with accommodation in a care home other than on a temporary basis.

### **Small amounts of state pension credit**

**13.** Where the amount of state pension credit payable is less than 10 pence per week, the credit shall not be payable unless the claimant is in receipt of another benefit payable with the credit.

## **PART III**

### *Income*

### **Calculation of income and capital**

**14.** The income and capital of—

- (a) the claimant; and
- (b) any partner of the claimant,

shall be calculated in accordance with the rules set out in this Part; and any reference in this Part to the claimant shall apply equally to any partner of the claimant.

### **Income for the purposes of the Act**

**15.—(1)** For the purposes of section 15(1)(e) (income), all social security benefits are prescribed except—

- (a) disability living allowance;
- (b) attendance allowance payable under section 64 of the 1992 Act;
- (c) an increase of disablement pension under section 104 or 105 of the 1992 Act;
- (d) a payment under regulations made in exercise of the power conferred by paragraph 7(2) (b) of Part II of Schedule 8 to the 1992 Act<sup>(32)</sup>;
- (e) an increase of an allowance payable in respect of constant attendance under paragraph 4 of Part I of Schedule 8 to the 1992 Act;
- (f) any child special allowance payable under section 56 of the 1992 Act;
- (g) any guardian's allowance payable under section 77 of the 1992 Act;
- (h) any increase for a dependant, other than the claimant's partner, payable in accordance with Part IV of the 1992 Act;
- (i) any social fund payment made under Part VIII of the 1992 Act;
- (j) child benefit payable in accordance with Part IX of the 1992 Act;
- (k) Christmas bonus payable under Part X of the 1992 Act;
- (l) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland.

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<sup>(31)</sup> 1998 c. 14.

<sup>(32)</sup> See in particular paragraph 7(2)(b) of Schedule 8.

(2) For the purposes of section 15(1)(f) (foreign social security benefits), income includes all foreign social security benefits which are similar to the social security benefits prescribed under paragraph (1).

(3) Where the payment of any social security benefit prescribed under paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (4)) the amount to be taken into account under paragraph (1) shall be the amount before the deduction is made.

(4) The adjustments specified in this paragraph are those made in accordance with—

- (a) the Social Security (Overlapping Benefits) Regulations 1979<sup>(33)</sup>;
- (b) the Social Security (Hospital In-Patients) Regulations 1975<sup>(34)</sup>;
- (c) section 30DD or section 30E of the 1992 Act<sup>(35)</sup> (reductions in incapacity benefit in respect of pensions and councillor's allowances).

(5) For the purposes of section 15(1)(j) (income to include income of prescribed descriptions), income of the following descriptions is prescribed—

- (a) any payment made under article 37 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983<sup>(36)</sup>;
- (b) a pension paid to victims of National Socialist persecution 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;
- (c) payments under a scheme made under the Pneumoconiosis etc. (Worker's Compensation) Act 1979<sup>(37)</sup>;
- (d) payments made towards the maintenance of the claimant by his spouse or former spouse or towards the maintenance of the claimant's partner by his spouse or former spouse, including payments made—
  - (i) under a court order;
  - (ii) under an agreement for maintenance; or
  - (iii) voluntarily;
- (e) payments due from any person in respect of board and lodging accommodation provided by the claimant, and for this purpose "board and lodging accommodation" has the same meaning as in paragraph 8(2) of Schedule IV;
- (f) payments consisting of royalties or other sums received as a consideration for the use of, or the right to use, any copyright, patent or trade mark; and
- (g) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982<sup>(38)</sup>.

(6) For the purposes of section 15(2), a claimant's capital, other than capital disregarded under Schedule V, shall be deemed to yield a weekly income—

- (a) in the case of a claimant residing permanently in accommodation to which paragraph (7) applies, of £1 for each £500 in excess of £10,000 and £1 for any excess which is not a complete £500;
- (b) in any other case, of £1 for each £500 in excess of £6,000 and £1 for any excess which is not a complete £500.

<sup>(33)</sup> [S.I. 1979/597](#).

<sup>(34)</sup> [S.I. 1975/555](#).

<sup>(35)</sup> Sections 30DD and 30E were inserted by section 3(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

<sup>(36)</sup> [S.I. 1983/883](#).

<sup>(37)</sup> 1979 c. 41; amended by section 24 of the Social Security Act 1985 (c. 53).

<sup>(38)</sup> The Scheme is set out in the Appendix to [S.I. 1982/719](#).

(7) This paragraph applies to accommodation provided—

- (a) in a care home;
- (b) in an establishment run by the Abbeyfield Society (including all bodies corporate or incorporate which are affiliated to the Society);
- (c) under section 3 of, and Part II of the Schedule to, the Polish Resettlement Act 1947<sup>(39)</sup> (provision of accommodation) where the claimant requires personal care;
- (d) under sections 21 to 24 of the National Assistance Act 1948<sup>(40)</sup> (provision of accommodation), or, in Scotland, under section 13B or 59 of the Social Work (Scotland) Act 1968 or section 7 of the Mental Health (Scotland) Act 1984<sup>(41)</sup> (functions of local authorities) where—
  - (i) the home in which the accommodation is provided is either owned and managed or owned or managed by a local authority; and
  - (ii) the claimant occupies the accommodation other than on a temporary basis.

(8) For the purposes of paragraph (6), a person shall be treated as residing permanently in the accommodation—

- (a) except where sub-paragraph (b) applies, notwithstanding that he is absent from it for a period not exceeding 52 weeks;
- (b) if it is accommodation to which paragraph (7)(c) applies—
  - (i) notwithstanding that he is absent from it for a period not exceeding 13 weeks; and
  - (ii) if he, with the agreement of the manager of the home, intends to return to it in due course.

### Retirement pension income

**16.** There shall be added to the descriptions of income listed in section 16(1) (retirement pension income) the following paragraph—

- “(k) any sum payable by way of pension out of money provided under the Civil List Act 1837<sup>(42)</sup>, the Civil List Act 1937<sup>(43)</sup>, the Civil List Act 1952<sup>(44)</sup>, the Civil List Act 1972<sup>(45)</sup> or the Civil List 1975<sup>(46)</sup>.”

### Calculation of weekly income

**17.—**(1) Except where paragraph (2) and (4) apply, for the purposes of calculating the weekly income of the claimant, where the period in respect of which a payment is made—

- (a) does not exceed a week, the whole of that payment shall be included in the claimant’s weekly income;
- (b) exceeds a week, the amount to be included in the claimant’s weekly income 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;

<sup>(39)</sup> 1947 c. 19.

<sup>(40)</sup> 1948 c. 29; section 21 is amended by the National Health Services and Community Care Act 1990 (c. 19), section 42(1).

<sup>(41)</sup> 1984 c. 36.

<sup>(42)</sup> 1837 c. 2.

<sup>(43)</sup> 1937 c. 32.

<sup>(44)</sup> 1952 c. 37.

<sup>(45)</sup> 1972 c. 7.

<sup>(46)</sup> 1975 c. 82.

- (ii) in a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
  - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
  - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number of days in the period in respect of which it is made.
- (2) Where—
  - (a) the claimant's regular pattern of work is such that he does not work the same hours every week; or
  - (b) the amount of the claimant's income fluctuates and has changed more than once,
 the weekly amount of that claimant's income shall be determined—
  - (i) if, in a case to which sub-paragraph (a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences); or
  - (ii) in any other case, on the basis of—
    - (aa) the last two payments if those payments are one month or more apart;
    - (bb) the last four payments if the last two payments are less than one month apart; or
    - (cc) such other payments as may, in the particular circumstances of the case, enable the claimant's average weekly income to be determined more accurately.
- (3) For the purposes of paragraph (2)(b) the last payments are the last payments before the date the claim was made or treated as made or, if there is a subsequent supersession under section 10 of the Social Security Act 1998<sup>(47)</sup>, the last payments before the date of the supersession.
- (4) If a claimant is entitled to receive a payment to which paragraph (5) applies, the amount of that payment shall be treated as if made in respect of a period of a year.
- (5) This paragraph applies to—
  - (a) royalties or other sums payable as a consideration for the use of, or the right to use, any copyright, patent or trade mark; and
  - (b) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982.
- (6) Where payments are made in a currency other than Sterling, the value of the payment shall be determined by taking the Sterling equivalent on the date the payment is made.
- (7) Income specified in Schedule IV is to be disregarded in the calculation of a claimant's income.
- (8) Schedule V shall have effect so that—
  - (a) the capital specified in Part I shall be disregarded for the purpose of determining a claimant's income; and
  - (b) the capital specified in Part II shall be disregarded for the purpose of determining a claimant's income under regulation 15(6).
- (9) There shall be disregarded from a claimant's earnings any sum specified in Schedule VI.
- (10) In the case of any income taken into account for the purpose of calculating a person's income, there shall be disregarded—
  - (a) any amount payable by way of tax;

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(47) 1998 c. 14.

- (b) any amount deducted by way of National Insurance Contributions under the 1992 Act or under the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(48)</sup>;
- (c) one half of any sum payable by a claimant by way of a contribution towards an occupational pension scheme or a personal pension scheme.

### **Notional income**

**18.**—(1) A claimant who has attained the qualifying age shall be treated as possessing—

- (a) the amount of any retirement pension income—
  - (i) to which section 16(1)(a) to (e) applies;
  - (ii) for which no claim has been made; and
  - (iii) to which he might expect to be entitled if a claim for it were made;
- (b) income from an occupational pension scheme which the claimant elected to defer.

(2) Where a person, aged not less than 60, is a person entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) 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.

(3) The amount of any income foregone in a case to which either head (i) or (ii) of paragraph (2) (a) applies shall be the maximum amount of income which may be withdrawn from the fund.

(4) The amount of any income foregone in a case to which either head (iii) of paragraph (2) (a) or paragraph (2)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant scheme or retirement annuity contract been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (3).

(5) In paragraph (2), “money purchase benefits” has the meaning it has in the Pensions Scheme Act 1993<sup>(49)</sup>.

(6) A person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to state pension credit or increasing the amount of that benefit.

### **Calculation of capital in the United Kingdom**

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

- (a) except in a case to which paragraph (b) applies, at its current market or surrender value less—

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<sup>(48)</sup> 1992 c. 7.

<sup>(49)</sup> 1993 c. 48; see section 181(1) of that Act.

- (i) where there would be expenses attributable to sale, 10 per cent.; and
- (ii) the amount of any encumbrance 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 first day on which state pension credit is payable or the date of determination of the claim, whichever is the earlier, or if there is a subsequent supersession, before 1st July preceding the date of the supersession, at the price which it would have realised on that 1st July, had it been purchased on the last day of that issue; or
  - (ii) in any other case, at its purchase price.

### **Calculation of capital outside the United Kingdom**

**20.** 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,

less, where there would be expenses attributable to sale, 10 per cent., and the amount of any encumbrance secured on it.

### **Notional capital**

**21.—(1)** A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to state pension credit 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 22 (diminishing notional capital rule); or
- (c) to the extent that the capital comprises assets administered on behalf of a person—
  - (i) by the High Court under the provisions of Order 80 of the Rules of the Supreme Court, by the County Court under Order 10 of the County Court Rules 1981 or by the Court of Protection; or
  - (ii) in accordance with an order under Rule 43.15 of the Act of Sederunt (Rules of the Court of Session 1994)1994 or under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment)1965 or under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of the Ordinary Cause Rules,

where the assets derive from an award of damages for a personal injury to that person.

**(2)** Without prejudice to the generality of paragraph (1) a person who disposes of a capital resource shall be regarded as—

- (a) depriving himself of it if the disposal was by way of gift to a third party;
- (b) not depriving himself of it if the disposal was for the purpose of—
  - (i) reducing or paying a debt owed by the claimant; or
  - (ii) purchasing goods or services if the expenditure was reasonable in the circumstances of the claimant's case.

### **Diminishing notional capital rule**

**22.**—(1) Where a claimant is treated as possessing capital under regulation 21(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a week that 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 (2);
- (b) in the case of a week in respect of which sub-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 (3) is satisfied, shall be reduced by the amount determined under paragraph (3).

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

- (a) he is in receipt of state pension credit; and
- (b) but for regulation 22(1), he would have received an additional amount of state pension credit in that benefit week;

and in such a case, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to that additional amount.

(3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to state pension credit in the relevant week, but for regulation 22(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

- (a) the amount of state pension credit to which the claimant would have been entitled in the relevant week but for regulation 22(1);
- (b) the amount of housing benefit (if any) equal to the difference between his maximum housing benefit and the amount (if any) of housing benefit which he is awarded in respect of the benefit week, within the meaning of regulation 2(1) of the Housing Benefit (General) Regulations 1987<sup>(50)</sup> (interpretation), which includes the last day of the relevant week;
- (c) the amount of council tax benefit (if any) equal to the difference between his maximum council tax benefit and the amount (if any) of council tax benefit which he is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose “benefit week” has the same meaning as in regulation 2(1) of the Council Tax Benefit (General) Regulations 1992<sup>(51)</sup> (interpretation).

(4) The amount determined under paragraph (3) shall be re-determined under that paragraph if the claimant makes a further claim for state pension credit and the conditions in paragraph (5) are satisfied, and in such a case—

- (a) sub-paragraphs (a) to (c) of paragraph (3) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to paragraph (6), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.

(5) The conditions are that—

- (a) a further claim is made 26 or more weeks after—

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<sup>(50)</sup> S.I.1987/1971.

<sup>(51)</sup> S.I. 1992/1814.

- (i) the date on which the claimant made a claim for state pension credit in respect of which he was first treated as possessing the capital in question under regulation 22(1); or
  - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which he last made a claim for state pension credit which resulted in the weekly amount being re-determined; or
  - (iii) the date on which he last ceased to be in receipt of state pension credit, whichever last occurred; and
  - (b) the claimant would have been entitled to state pension credit but for regulation 22(1).
- (6) The amount as re-determined pursuant to paragraph (4) 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.
- (7) For the purpose of this regulation—
- (a) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 22(1)—
    - (i) was first taken into account for the purpose of determining his entitlement to state pension credit; or
    - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to state pension credit on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, state pension credit;
 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;
  - (b) “relevant subsequent week” means the benefit week which includes the day on which the further claim or, if more than one further claim had been made, the last such claim was made.

### **Capital jointly held**

**23.** 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 Part shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

### **Income paid to third parties**

**24.—(1)** Any payment of income, other than a payment specified in paragraph (2), to a third party in respect of the claimant shall be treated as possessed by the claimant.

(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where—

- (a) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, to Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person’s estate under section 41 of the Solicitors (Scotland) Act 1980<sup>(52)</sup>;

(52) 1980 c. 46.



- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) the person referred to in sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

## PART IV

### *Loss of benefit*

#### **Loss of benefit**

**25.**—(1) The Social Security (Loss of Benefit) Regulations 2001(**53**) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2 (disqualification period), in—

- (i) paragraph (1) (a)(iii) and paragraph (3) (c) after the words “jobseeker’s allowance”, insert “, state pension credit”; and
- (ii) paragraph (1) (b)(iii) for the words “or jobseeker’s allowance”, substitute “jobseeker’s allowance or state pension credit”.

(3) After regulation 3, insert—

#### **“Reduction in state pension credit**

**3A.**—(1) Subject to the following provisions of this regulation, state pension credit shall be payable in the case of an offender for any week comprised in the disqualification period or in the case of an offender’s family member for any week comprised in the relevant period, as if the rate of benefit were reduced—

- (a) where the offender or the offender’s family member is pregnant or seriously ill, by 20 per cent. of the relevant sum; or
- (b) where sub-paragraph (a) does not apply, by 40 per cent. of the relevant sum.

(2) In paragraph (1), the “relevant sum” is the amount applicable—

- (a) except where sub-paragraph (b) applies, in respect of a single claimant aged not less than 25 under paragraph 1(1) of Schedule 2 to the Income Support Regulations; or
- (b) if the claimant’s family member is the offender and the offender has not attained the age of 25, the amount applicable in respect of a person of the offender’s age under paragraph 1(1) of Part I of that Schedule,

on the first day of the disqualification period or, as the case may be, on the first day of the relevant period.

(3) Payment of state pension credit shall not be reduced under this regulation to less than 10 pence per week.

(4) A reduction under paragraph (1) shall, if it is not a multiple of 5 pence, be rounded to the nearest such multiple or, if it is a multiple of 2.5 pence but not of 5 pence, to the next lower multiple of 5 pence.

(5) Where the rate of state pension credit payable to an offender or an offender’s family member changes, the rules set out above for a reduction in the credit payable shall be applied

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(53) [S.I. 2001/4022](#); the relevant amending Instrument is [S.I. 2002/486](#).

to the new rate and any adjustment to the reduction shall take effect from the first day of the first benefit week to start after the date of change.

(6) In paragraph (5), “benefit week” has the same meaning as in regulation 1(2) of the State Pension Credit Regulations 2002.

(7) A person of a prescribed description for the purposes of the definition of “family” in section 137(1) of the Benefits Act as it applies for the purpose of this regulation is—

- (a) a person who is an additional spouse for the purposes of section 12(1) of the State Pension Credit Act 2002<sup>(54)</sup> (additional spouse in the case of polygamous marriages);
- (b) a person aged 16 or over who is treated as a child for the purposes of section 142 of the Benefits Act.”

Signed by authority of the Secretary of State for Work and Pensions.

11th July 2002

*Ian McCartney*  
Minister of State,  
Department for Work and Pensions

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<sup>(54)</sup> 2002 c. 16.

## SCHEDULE I

Regulation 6(4)

### PART I

#### **Circumstances in which persons are treated as being or not being severely disabled**

##### **Severe disablement**

1.—(1) For the purposes of regulation 6(4) (additional amounts for persons severely disabled), the claimant is to be treated as being severely disabled if, and only if—

- (a) in the case of a claimant who has no partner—
  - (i) he is in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act; and
  - (ii) no person who has attained the age of 18 is normally residing with the claimant, nor is the claimant normally residing with such a person, other than a person to whom paragraph 2 applies; and
  - (iii) no person is entitled to and in receipt of an allowance under section 70 of the 1992 Act (invalid care allowance) in respect of caring for him;
- (b) in the case of a claimant who has a partner—
  - (i) both partners are in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act; and
  - (ii) no person who has attained the age of 18 is normally residing with the partners, nor are the partners normally residing with such a person, other than a person to whom paragraph 2 applies;and either a person is entitled to, and in receipt of, an allowance under section 70 of the 1992 Act in respect of caring for one only of the partners or, as the case may be, no person is entitled to, and in receipt of, such an allowance in respect of caring for either partner;
- (c) in the case of a claimant who has a partner and to whom head (b) does not apply—
  - (i) either the claimant or his partner is in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act; and
  - (ii) the other partner is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948<sup>(55)</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a regional or islands council; and
  - (iii) no person who has attained the age of 18 is normally residing with the partners, nor are the partners normally residing with such a person, other than a person to whom paragraph 2 applies; and
  - (iv) no person is entitled to and in receipt of an allowance under section 70 of the 1992 Act in respect of caring for the person to whom head (c) (i) above applies.

(2) A person shall be treated—

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(55) 1948 c. 29.

*Status: This is the original version (as it was originally made).*

- (a) for the purposes of sub-paragraph (1) as being in receipt of attendance allowance or, as the case may be, the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act, for any period—
    - (i) before an award is made but in respect of which the allowance is awarded; or
    - (ii) not covered by an award but in respect of which a payment is made in lieu of an award;
  - (b) for the purposes of sub-paragraph (1)(b) as being in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance section 37ZB(3) of the 1992 Act if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
  - (c) for the purposes of sub-paragraph (1), as not being in receipt of an allowance under section 70 of the 1992 Act for any period before the date on which the award is made.
- (3) For the purposes of sub-paragraph (1)(c)(ii), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the requirements set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

#### **Persons residing with the claimant whose presence is ignored**

2.—(1) For the purposes of paragraph 1(1)(a)(ii), (b)(ii) and (c)(iii), this paragraph applies to the persons specified in the following sub-paragraphs.

(2) A person who—

- (a) is in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act;
- (b) is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a regional or islands council;
- (c) is no longer registered as blind in accordance with head (b) but was so registered not more than 28 weeks earlier;
- (d) lives with the claimant in order to care for him or his partner and is engaged by a charitable or voluntary organisation which makes a charge to the claimant or his partner for the services provided by that person;
- (e) is a partner of a person to whom head (d) above applies; or
- (f) is a person who is treated as a child for the purposes of Part IX of the 1992 Act<sup>(56)</sup>.

(3) Subject to sub-paragraph (4), a person who joins the claimant's household for the first time in order to care for the claimant or his partner and immediately before he joined the household, the claimant or his partner was treated as being severely disabled.

(4) Sub-paragraph (3) applies only for the first 12 weeks following the date on which the person first joins the claimant's household.

(5) A person who is not a close relative of the claimant or his partner and—

- (a) who is liable to make payments on a commercial basis to the claimant or his partner in respect of his occupation of the dwelling;
- (b) to whom the claimant or his partner is liable to make payments on a commercial basis in respect of his occupation of that person's dwelling; or

<sup>(56)</sup> See section 142(1) of the 1992 Act.

- (c) who is a member of the household of a person to whom head (a) or (b) applies.
- (6) Subject to paragraph 3(3), a person who jointly occupies the claimant's dwelling and who is either—
  - (a) co-owner of that dwelling with the claimant or the claimant's partners (whether or not there are other co-owners); or
  - (b) jointly liable with the claimant or the claimant's partner to make payments to a landlord in respect of his occupation of that dwelling.
- (7) Subject to paragraph 3(3), a person who is a partner of a person to whom sub-paragraph (6) applies.

**3.—**(1) For the purposes of paragraphs 1 and 2, 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.

(2) In sub-paragraph (1), “communal area” means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation.

(3) Paragraph 2(6) and (7) applies to a person who is a close relative of the claimant or his partner only if the claimant or his partner's co-ownership, or joint liability to make payments to a landlord in respect of his occupation, of the dwelling arose either before 11th April 1988, or, if later, on or before the date upon which the claimant or the claimant's partner first occupied the dwelling in question.

## PART II

### Amount applicable for carers

**4.—**(1) For the purposes of regulation 6(6)(a), this paragraph is satisfied if any of the requirements specified in sub-paragraphs (2) to (4) are met.

(2) A claimant is, or in the case of partners either partner is, or both partners are, entitled to an allowance under section 70 of the 1992 Act (invalid care allowance).

(3) Where an additional amount has been awarded under regulation 6(6)(a) but

- (a) the person in respect of whose care the allowance has been awarded dies; or
- (b) the person in respect of whom the additional amount was awarded ceases to be entitled or ceases to be treated as entitled to the allowance,

this paragraph shall be treated as satisfied for a period of 8 weeks from the relevant date specified in sub-paragraph (4).

(4) The relevant date for the purposes of sub-paragraph is—

- (a) the Sunday following the death of the person in respect of whose care the allowance has been awarded (or beginning with the date of death if the death occurred on a Sunday);
- (b) where sub-paragraph (a) does not apply, the date on which the person who has been entitled to the allowance ceases to be entitled to that allowance.

**5.** For the purposes of paragraph 4, a person shall be treated as being entitled to and in receipt of an allowance under section 70 of the 1992 Act for any period not covered by an award but in respect of which a payment is made in lieu of an award.

## PART III

### **Amount applicable for former claimants of income support or income-related jobseeker's allowance**

**6.—**(1) If on the relevant day the relevant amount exceeds the provisional amount, an additional amount (“the transitional amount”) equal to the difference shall be applicable to a claimant to whom sub-paragraph (2) applies.

(2) This sub-paragraph applies to a claimant who, in respect of the day before the relevant day, was entitled to either income support or an income-based jobseeker's allowance.

(3) The relevant day is the day in respect of which the claimant is first entitled to state pension credit.

(4) The provisional amount means the amount of the appropriate minimum guarantee applicable to the claimant on the relevant day but for this paragraph.

(5) The relevant amount means the amount which, on the day before the relevant day, was the claimant's applicable amount—

- (a) for the purposes of determining his entitlement to income support; or
- (b) for the purpose of determining his entitlement to an income-based jobseeker's allowance,

less any of the following amounts included in it—

- (i) any amount determined in accordance with paragraph 2 of Schedule 2 to the Income Support Regulations or paragraph 2 of Schedule 1 to the Jobseeker's Allowance Regulations;
- (ii) any amount by way of a residential allowance applicable in accordance with paragraph 2A of Schedule 2 to the Income Support Regulations or paragraph 3 of Schedule 1 to the Jobseeker's Allowance Regulations;
- (iii) any amount by way of family premium applicable in accordance with paragraph 3 of Schedule 2 to the Income Support Regulations or paragraph 4 of Schedule 1 to the Jobseeker's Allowance Regulations;
- (iv) any amount by way of disabled child premium applicable in accordance with paragraph 14 of Schedule 2 to the Income Support Regulations or paragraph 16 of Schedule 1 to the Jobseeker's Allowance Regulations; and
- (v) any amount in respect of a person other than the claimant or his partner by way of enhanced disability premium applicable in accordance with paragraph 13A of Schedule 2 to the Income Support Regulations or paragraph 15A of Schedule 1 to the Jobseeker's Allowance Regulations<sup>(57)</sup>.

(6) In determining the relevant amount under sub-paragraph (5), the applicable amount shall be increased by an amount equal to the amount (if any) payable to the claimant in accordance with Part II of the Income Support (Transitional) Regulations 1987<sup>(58)</sup> (transitional protection) or regulation 87(1) of the Jobseeker's Allowance Regulations (transitional supplement to income-based jobseeker's allowance).

(7) If—

- (a) paragraph 1 of Schedule 7 to the Income Support Regulations or paragraph 1 of Schedule 5 to the Jobseeker's Allowance applied to the claimant or his partner on the day before the relevant day; but

<sup>(57)</sup> The relevant amending Instrument is [S.I.2000/2629](#).

<sup>(58)</sup> [S.I.1987/1969](#); the relevant amending Instruments are [S.I.1988/521](#) and [670](#), [1989/1626](#) and [1991/1600](#).

- (b) paragraph 2(2) of Schedule 3 does not apply to the claimant or his partner on the relevant day;
- then for the purposes of this paragraph the relevant amount shall be determined on the assumption that the provision referred to in sub-paragraph (7)(a) did not apply in his case.
- (8) Subject to sub-paragraph (9), the transitional amount shall—
    - (a) be reduced by a sum equal to the amount (if any) by which the appropriate minimum guarantee increases after the relevant day;
    - (b) cease to be included in the claimant's appropriate minimum guarantee from the day on which—
      - (i) the sum mentioned in head (a) above equals or exceeds the transitional amount; or
      - (ii) the claimant or the claimant's partner ceases to be entitled to state pension credit.
  - (9) For the purposes of sub-paragraph (8), there shall be disregarded—
    - (a) any break in entitlement not exceeding 8 weeks; and
    - (b) any amount by which the increase in the appropriate minimum guarantee arises solely in consequence of paragraph 2(2) of Schedule 3 ceasing to apply in the claimant's case.

## SCHEDULE II

Regulation 6(6)(c)

### HOUSING COSTS

#### Housing costs

- 1.—**(1) Subject to the following provisions of this Schedule, the housing costs applicable to a claimant in accordance with regulation 6(6)(c) are those costs—
- (a) which the claimant or, if he has a partner, his partner is, in accordance with paragraph 3, liable to meet in respect of the dwelling occupied as the home which he or his partner is treated as occupying; and
  - (b) which qualify under paragraphs 11 to 13.
- (2) In this Schedule—
- (a) “disabled person” means a person—
    - (i) aged 75 or over;
    - (ii) who, had he in fact been entitled to income support, would have satisfied the requirements of paragraph 12 of Schedule 2 to the Income Support Regulations (additional condition for the Higher Pensioner and Disability Premiums); or
    - (iii) who—
      - (aa) has not attained the age of 19 and for whom the claimant or his partner is responsible;
      - (bb) is a person in respect of whom disability living allowance is payable or would be payable but for any provision of the Social Security (Hospital In-Patients) Regulations 1975<sup>(59)</sup>; or
      - (cc) is registered as blind in a register compiled under section 29 of the National Assistance Act 1948<sup>(60)</sup> (welfare services) or, in Scotland, has

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<sup>(59)</sup> S.I.1975/555.

<sup>(60)</sup> 1948 c. 29.

*Status: This is the original version (as it was originally made).*

been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a regional or islands council, or who is within 28 weeks of ceasing to be so registered;

(b) “housing costs” means those costs to which sub-paragraph (1) refers;

(c) “standard rate” means the rate for the time being specified in paragraph 9.

(3) For the purposes of sub-paragraph (2)(a), a person shall not cease to be a disabled person on account of his being disqualified for receiving benefit or treated as capable of work by virtue of the operation of section 171E of the 1992 Act<sup>(61)</sup> (incapacity for work, disqualification etc.).

(4) In this Schedule, “non-dependant” means any person, except someone to whom sub-paragraph (5), (6) or (7) applies, who normally resides with the claimant.

(5) This sub-paragraph applies to—

(a) a partner of the claimant or any person under the age of 19 for whom the claimant or the claimant’s partner is responsible;

(b) a person who lives with the claimant in order to care for him or for the claimant’s partner and who is engaged for that purpose by a charitable or voluntary organisation which makes a charge to the claimant or the claimant’s partner for the care provided by that person;

(c) the partner of a person to whom head (b) above applies.

(6) This sub-paragraph applies to a person, other than a close relative of the claimant or the claimant’s partner,—

(a) who is liable to make payments on a commercial basis to the claimant or the claimant’s partner in respect of his occupation of the claimant’s dwelling;

(b) to whom the claimant or his partner is liable to make payments on a commercial basis in respect of his occupation of that person’s dwelling; or

(c) who is a member of the household of a person to whom head (a) or (b) above applies.

(7) This sub-paragraph applies to—

(a) a person who jointly occupies the claimant’s dwelling and who is either—

(i) co-owner of that dwelling with the claimant or the claimant’s partners (whether or not there are other co-owners); or

(ii) jointly liable with the claimant or the claimant’s partner to make payments to a landlord in respect of his occupation of that dwelling;

(b) a partner of a person to whom head (a) above applies.

(8) For the purpose of sub-paragraphs (4) to (7) 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.

(9) In sub-paragraph (8), “communal area” means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation.

## **Remunerative work**

2.—(1) Subject to the following provisions of this paragraph, a person shall be treated for the purposes of this Schedule 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 16 hours a week, in work for which payment is made or which is done in expectation of payment.

<sup>(61)</sup> Section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c. 18).



(2) Subject to sub-paragraph (3), 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 no work, those periods but disregarding any other absences);
- (b) in any other case, the period of 5 weeks immediately prior to the date of claim, 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, for the purposes of sub-paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.

(4) 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 will fluctuate, the average of the hours, which he is expected to work in a week.

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

(6) A person on income support or an income-based jobseeker's allowance for more than 3 days in any benefit week shall be treated as not being in remunerative work in that week.

(7) A person shall not be treated as engaged in remunerative work on any day on which the person is on maternity leave or is absent from work because he is ill.

(8) A person shall not be treated as engaged in remunerative work on any day on which he is engaged in an activity in respect of which—

- (a) a sports award has been made, or is to be made, to him; and
- (b) no other payment is made or is expected to be made to him.

(9) In this paragraph "benefit week"—

- (a) in relation to income support, has the same meaning as in regulation 2(1) of the Income Support Regulations;
- (b) in relation to jobseeker's allowance, has the same meaning as in regulation 1(3) of the Jobseeker's Allowance Regulations.

### **Circumstances in which a person is liable to meet housing costs**

**3.** A person is liable to meet housing costs where—

- (a) the liability falls upon him or his partner but not where the liability is to a member of the same household as the person on whom the liability falls;
- (b) because the person liable to meet the housing costs is not meeting them, the claimant has to meet those costs in order to continue to live in the dwelling occupied as the home and it is reasonable in all the circumstances to treat the claimant as liable to meet those costs;
- (c) he in practice shares the housing costs with other members of the household none of whom are close relatives either of the claimant or his partner, and
  - (i) one or more of those members is liable to meet those costs, and
  - (ii) it is reasonable in the circumstances to treat him as sharing responsibility.

**Circumstances in which a person is to be treated as occupying a dwelling as his home**

4.—(1) Subject to the following provisions of this paragraph, a person shall be treated as occupying as his home the dwelling normally occupied as his home by himself or, if he has a partner, by himself and his partner, and he shall not be treated as occupying any other dwelling as his home.

(2) In determining whether a dwelling is the dwelling normally occupied as the claimant's home for the purposes of sub-paragraph (1) regard shall be had to any other dwelling occupied by the claimant or by him and his partner whether or not that other dwelling is in Great Britain.

(3) Subject to sub-paragraph (4), where a claimant who has no partner is a full-time student or is on a training course and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which he occupies for the purpose of attending his course of study or his training course or, as the case may be, the dwelling which he occupies when not attending his course, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.

(4) A full-time student shall not be treated as occupying a dwelling as his home for any week of absence from it, other than an absence occasioned by the need to enter hospital for treatment, outside the period of study, if the main purpose of his occupation during the period of study would be to facilitate attendance on his course.

(5) Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as his home and he is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling normally occupied or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make those payments.

(6) Where a person is liable to make payments in respect of two (but not more than two) dwellings, he shall be treated as occupying both dwellings as his home only—

- (a) where he has left and remains absent from the former dwelling occupied as the home through fear of violence in that dwelling or of violence by a close relative or former partner and it is reasonable that housing costs should be met in respect of both his former dwelling and his present dwelling occupied as the home; or
- (b) in the case of partners, where one partner is a full-time student or is on a training course and it is unavoidable that he or they should occupy two separate dwellings and reasonable that housing costs should be met in respect of both dwellings; or
- (c) in the case where a person has moved into a new dwelling occupied as the home, except where sub-paragraph (5) applies, for a period not exceeding four benefit weeks if his liability to make payments in respect of two dwellings is unavoidable.

(7) Where—

- (a) a person has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
- (b) he had claimed state pension credit before moving in and either that claim has not yet been determined or it has been determined but—
  - (i) an amount has not been included under this Schedule; or
  - (ii) the claim has been refused and a further claim has been made within four weeks of the date on which the claimant moved into the new dwelling occupied as the home; and
- (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and—

- (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the claimant, his partner or a person under the age of 19 for whom either the claimant or his partner is responsible; or
- (ii) the move was delayed pending the outcome of an application under Part VIII of the 1992 Act for a social fund payment to meet a need arising out of the move or in connection with setting up the home in the dwelling; or
- (iii) the person became liable to make payments in respect of the dwelling while he was a patient or was in a care home,

he shall be treated as occupying the dwelling as his home for any period not exceeding four weeks immediately prior to the date on which he moved into the dwelling and in respect of which he was liable to make payments.

(8) This sub-paragraph applies to a person who enters a care home—

- (a) for the purpose of ascertaining whether the accommodation suits his needs; and
- (b) with the intention of returning to the dwelling which he normally occupies as his home should, in the event, the care home prove not to suit his needs,

and while in the accommodation, the part of the dwelling which he normally occupies as his home is not let, or as the case may be, sub-let to another person.

(9) A person to whom sub-paragraph (8) applies shall be treated as occupying the dwelling he normally occupies as his home during any period (commencing with the day he enters the accommodation) not exceeding 13 weeks in which the person is resident in the accommodation, but only in so far as the total absence from the dwelling does not exceed 52 weeks.

(10) A person, other than a person to whom sub-paragraph (11) applies, shall be treated as occupying a dwelling as his home throughout any period of absence not exceeding 13 weeks, if, and only if—

- (a) he intends to return to occupy the dwelling as his home; and
- (b) the part of the dwelling normally occupied by him has not been let or, as the case may be, sub-let to another person; and
- (c) the period of absence is unlikely to exceed 13 weeks.

(11) This sub-paragraph applies to a person whose absence from the dwelling he normally occupies as his home is temporary and—

- (a) he intends to return to occupy the dwelling as his home; and
- (b) while the part of the dwelling which is normally occupied by him has not been let or, as the case may be, sub-let; and
- (c) he is—
  - (i) detained in custody on remand pending trial or, as a condition of bail, required to reside in a hostel approved under section 27(1) of the Probation Service Act 1993<sup>(62)</sup> or, as the case may be, detained pending sentence upon conviction; or
  - (ii) resident in a hospital or similar institution as a patient; or
  - (iii) undergoing or, as the case may be, his partner or a person who has not attained the age of 19 and who is dependent on him or his partner is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than in a care home; or
  - (iv) following, in the United Kingdom or elsewhere, a training course; or

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(62) 1993 c. 47.

- (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere; or
  - (vi) undertaking the care of a person under the age of 19 whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment, or
  - (vii) a person who is, whether in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than a care home; or
  - (viii) a full-time student to whom sub-paragraph (3) or (6)(b) does not apply; or
  - (ix) a person, other than a person to whom sub-paragraph (8) applies, who is receiving care provided in a care home; or
  - (x) a person to whom sub-paragraph (6)(a) does not apply and who has left the dwelling he occupies as his home through fear of violence in that dwelling, or by a person who was formerly his partner or is a close relative; and
  - (d) the period of his absence is unlikely to exceed a period of 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.
- (12) A person to whom sub-paragraph (11) applies is to be treated as occupying the dwelling he normally occupies as his home during any period of absence not exceeding 52 weeks beginning with the first day of that absence.
- (13) In this paragraph—
- (a) “medically approved” means certified by a medical practitioner;
  - (b) “training course” means such a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

### **Housing costs not met**

- 5.—(1) No amount may be met under the provisions of this Schedule—
- (a) in respect of housing benefit expenditure; or
  - (b) where the claimant is in accommodation which is a care home except where he is in such accommodation during a temporary absence from the dwelling he occupies as his home and in so far as they relate to temporary absences, the provisions of paragraph 4(8) to (12) apply to him during that absence.
- (2) Subject to the following provisions of this paragraph, loans which, apart from this paragraph, qualify under paragraph 11 shall not so qualify where the loan was incurred during the relevant period and was incurred—
- (a) after 1st October 1995, or
  - (b) after 2nd May 1994 and the housing costs applicable to that loan were not met by virtue of the former paragraph 5A of Schedule 3 to the Income Support Regulations in any one or more of the 26 weeks preceding 2nd October 1995; or
  - (c) subject to sub-paragraph (3), in the 26 weeks preceding 2nd October 1995 by a person—
    - (i) who was not at that time entitled to income support; and
    - (ii) who becomes, or whose partner becomes entitled to income support or an income-based jobseeker’s allowance after 1st October 1995 and that entitlement is within 26 weeks of an earlier entitlement to income support or an income-based jobseeker’s allowance of the claimant or his partner.

(3) Sub-paragraph (2)(c) shall not apply in respect of a loan where the claimant has interest payments on that loan met without restrictions under an award of income support in respect of a period commencing before 2nd October 1995.

(4) The “relevant period” for the purposes of this paragraph is any period during which the person to whom the loan was made—

- (a) is entitled to income support, income-based jobseeker’s allowance or state pension credit; or
- (b) has a partner and the partner is entitled to income support, income-based jobseeker’s allowance or to state pension credit;

together with any linked period, that is to say a period falling between two periods separated by not more than 26 weeks in which one of heads (a) or (b) above is satisfied.

(5) For the purposes of sub-paragraph (4), a person shall be treated as entitled to income support or, as the case may be, income-based jobseeker’s allowance or state pension credit, during any period when he or his partner was not so entitled because—

- (a) that person or his partner was participating in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker’s Allowance Regulations, in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or in the Intense Activity Period for 50 plus; and
- (b) in consequence of such participation that person or his partner was engaged in remunerative work or—
  - (i) in the case of income support, had an income in excess of the claimant’s applicable amount as prescribed in Part IV of the Income Support Regulations; or
  - (ii) in the case of state pension credit, the claimant’s income exceeded the amount of his state pension credit entitlement.

(6) For the purposes of sub-paragraph (4)—

- (a) any week in the period of 26 weeks ending on 1st October 1995 on which there arose an entitlement to income support such as is mentioned in that sub-paragraph shall be taken into account in determining when the relevant period commences; and
- (b) two or more periods of entitlement and any intervening linked periods shall together form a single relevant period.

(7) Where the loan to which sub-paragraph (2) refers has been applied—

- (a) for paying off an earlier loan, and that earlier loan qualified under paragraph 11 during the relevant period; or
- (b) to finance the purchase of a property where an earlier loan, which qualified under paragraph 11 or 12 during the relevant period in respect of another property, is paid off (in whole or in part) with monies received from the sale of that property;

then the amount of the loan to which sub-paragraph (2) applies is the amount (if any) by which the new loan exceeds the earlier loan.

(8) Notwithstanding the preceding provisions of this paragraph, housing costs shall be met in any case where a claimant satisfies any of the conditions specified in sub-paragraphs (9) to (13) below, but—

- (a) those costs shall be subject to any additional limitations imposed by the sub-paragraph; and
- (b) where the claimant satisfies the conditions in more than one of these sub-paragraphs, only one sub-paragraph shall apply in his case and the one that applies shall be the one most favourable to him.

(9) The conditions specified in this sub-paragraph are that—

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- (a) during the relevant period the claimant or his partner acquires an interest (“the relevant interest”) in a dwelling which he then occupies or continues to occupy, as his home; and
- (b) in the week preceding the week in which the relevant interest was acquired, housing benefit was payable to the claimant or his partner;

so however that the amount to be met by way of housing costs shall initially not exceed the aggregate of—

- (i) the housing benefit payable in the week mentioned at sub-paragraph (9)(b); and
- (ii) any additional amount applicable to the claimant or his partner in accordance with regulation 6(6)(c) in that week,

and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of the acquisition, in the standard rate or in any housing costs which qualify under paragraph 13 (other housing costs).

(10) The condition specified in this sub-paragraph is that the loan was taken out, or an existing loan increased, to acquire alternative accommodation more suited to the special needs of a disabled person than the accommodation which was occupied before the acquisition by the claimant.

(11) The conditions specified in this sub-paragraph are that—

- (a) the loan commitment increased in consequence of the disposal of the dwelling occupied as the home and the acquisition of an alternative such dwelling; and
- (b) the change of dwelling was made solely by reason of the need to provide separate sleeping accommodation for persons of different sexes aged 10 or over but under 19 who live with the claimant and are looked after by the claimant or his partner.

(12) The conditions specified in this sub-paragraph are that—

- (a) during the relevant period the claimant or his partner acquires an interest (“the relevant interest”) in a dwelling which he then occupies as his home; and
- (b) in the week preceding the week in which the relevant interest was acquired, an additional amount was applicable under regulation 6(6)(c) in respect of the claimant or his partner which included an amount determined by reference to paragraph 13 and did not include any amount specified in paragraph 11 or paragraph 12;

so however that the amount to be met by way of housing costs shall initially not exceed the amount so determined, and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of acquisition, in the standard rate or in any housing costs which qualify under paragraph 13 (other housing costs).

(13) The following provisions of this Schedule shall have effect subject to the provisions of this paragraph.

### **Apportionment of housing costs**

6.—(1) Where the dwelling occupied as the home is a composite hereditament and—

- (a) before 1st April 1990 for the purposes of section 48(5) of the General Rate Act 1967 (reduction of rates on dwellings), it appeared to a rating authority or it was determined in pursuance of subsection (6) of section 48 of that Act that the hereditament, including the dwelling occupied as the home, was a mixed hereditament and that only a proportion of the rateable value of the hereditament was attributable to use for the purpose of a private dwelling; or
- (b) in Scotland, before 1st April 1989 an assessor acting pursuant to section 45(1) of the Water (Scotland) Act 1980 (provision as to valuation roll) has apportioned the net annual value of the premises including the dwelling occupied as the home between the part occupied as a dwelling and the remainder,

the additional amount applicable under this Schedule shall be such proportion of the amounts applicable in respect of the hereditament or premises as a whole as is equal to the proportion of the rateable value of the hereditament attributable to the part of the hereditament used for the purposes of a private tenancy or, in Scotland, the proportion of the net annual value of the premises apportioned to the part occupied as a dwelling house.

(2) Subject to sub-paragraph (1) and the following provisions of this paragraph, where the dwelling occupied as the home is a composite hereditament, the additional amount applicable under this Schedule shall be the relevant fraction of the amount which would otherwise be applicable under this Schedule in respect of the dwelling occupied as the home.

(3) For the purposes of sub-paragraph (2), the relevant fraction shall be obtained in accordance with the formula—

$$\frac{A}{A + B}$$

where—

“A” is the current market value of the claimant’s interest in that part of the composite hereditament which is domestic property within the meaning of section 66 of the Act of 1988;

“B” is the current market value of the claimant’s interest in that part of the composite hereditament which is not domestic property within that section.

(4) In this paragraph—

“composite hereditament” means—

(a) as respects England and Wales, any hereditament which is shown as a composite hereditament in a local non-domestic rating list;

(b) as respects Scotland, any lands and heritages entered in the valuation roll which are part residential subjects within the meaning of section 26(1) of the Act of 1987;

“local non-domestic rating list” means a list compiled and maintained under section 41(1) of the Act of 1988;

“the Act of 1987” means the Abolition of Domestic Rates Etc. (Scotland) Act 1987(63);

“the Act of 1988” means the Local Government Finance Act 1988(64).

(5) Where responsibility for expenditure which relates to housing costs met under this Schedule is shared, the additional amounts applicable under this Schedule shall be calculated by reference to the appropriate proportion of that expenditure for which the claimant is responsible.

### **The calculation for loans**

7.—(1) The weekly amount of housing costs to be met under this Schedule in respect of a loan which qualifies under paragraph 11 or 12 shall be calculated by applying the formula—

$$\frac{A \times B}{52}$$

where—

A = the amount of the loan which qualifies under paragraph 11 or 12;

B = the standard rate for the time being specified in respect of that loan under paragraph 9.

(2) For the purposes of sub-paragraph (1) and subject to sub-paragraph (3), the amount of any qualifying loan shall be determined on the date the housing costs are first met and thereafter on the anniversary of that date.

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(63) 1987 c. 47.

(64) 1988 c. 41.

- (3) Where the claimant or his partner—
- (a) ceases to be in receipt of or treated as being in receipt of state pension credit; but
  - (b) within 12 weeks thereof, one of them subsequently becomes entitled again to the credit; and
  - (c) sub-paragraph (4) applies,
- the amount of the qualifying loan shall be—
- (i) the amount last determined for the purposes of the earlier entitlement; and
  - (ii) recalculated on each subsequent anniversary of the date which, for the purposes of sub-paragraph (2), housing costs were first met.
- (4) This sub-paragraph applies if—
- (a) the earlier entitlement included an amount in respect of a qualifying loan; and
  - (b) the circumstances affecting the calculation of the qualifying loan remain unchanged since the last calculation of that loan.
- (5) Where in the period since the amount applicable under this Schedule was last determined, there has been a change of circumstances, other than an increase or reduction in the amount of the an outstanding loan, which increases or reduces the amount applicable, it shall be recalculated so as to take account of that change.

#### **General provisions applying to housing costs**

8.—(1) Where for the time being a loan exceeds, or in a case where more than one loan is to be taken into account, the aggregate of those loans exceeds the appropriate amount specified in sub-paragraph (2), then the amount of the loan or, as the case may be, the aggregate amount of those loans, shall for the purposes of this Schedule, be the appropriate amount.

(2) Subject to the following provisions of this paragraph, the appropriate amount is £100,000.

(3) Where a person is treated under paragraph 4(6) (payments in respect of two dwellings) as occupying two dwellings as his home, then the restrictions imposed by sub-paragraph (1) shall be applied separately to the loans for each dwelling.

(4) In a case to which paragraph 6 (apportionment of housing costs) applies, the appropriate amount for the purposes of sub-paragraph (1) shall be the lower of—

- (a) a sum determined by applying the formula—

$$P \times Q;$$

where—

- P = the relevant fraction for the purposes of paragraph 6, and
- Q = the amount or, as the case may be, the aggregate amount for the time being of any loan or loans which qualify under this Schedule; or

- (b) the sum for the time being specified in sub-paragraph (2).

(5) In a case to which paragraph 11(3) or 12(3) (loans which qualify in part only) applies, the appropriate amount for the purposes of sub-paragraph (1) shall be the lower of—

- (a) a sum representing for the time being the part of the loan applied for the purposes specified in paragraph 11(1) or (as the case may be) paragraph 12(1); or
- (b) the sum for the time being specified in sub-paragraph (2).

(6) In the case of any loan to which paragraph 12(2)(k) (loan taken out and used for the purpose of adapting a dwelling for the special needs of a disabled person) applies the whole of the loan, to



the extent that it remains unpaid, shall be disregarded in determining whether the amount for the time being specified in sub-paragraph (2) is exceeded.

(7) Where in any case the amount for the time being specified for the purposes of sub-paragraph (2) is exceeded and there are two or more loans to be taken into account under either or both paragraphs 11 and 12, then the amount of eligible interest in respect of each of those loans to the extent that the loans remain outstanding shall be determined as if each loan had been reduced to a sum equal to the qualifying portion of that loan.

(8) For the purposes of sub-paragraph (7), the qualifying portion of a loan shall be determined by applying the following formula—

$$\frac{R \times S}{T}$$

where—

- R = the amount for the time being specified for the purposes of sub-paragraph (1);
- S = the amount of the outstanding loan to be taken into account;
- T = the aggregate of all outstanding loans to be taken into account under paragraphs 11 and 12.

### **The standard rate**

9.—(1) The standard rate is the rate of interest applicable to a loan which qualifies under this Schedule and—

- (a) except where sub-paragraph (2) applies, is 5.34 per cent. per annum; or
- (b) where sub-paragraph (2) applies, shall equal the actual rate of interest charged on the loan on the day the housing costs first fall to be met.

(2) This sub-paragraph applies where the actual rate of interest charged on the loan which qualifies under this Schedule is less than 5 per cent. per annum on the day the housing costs first fall to be met and ceases to apply when the actual rate of interest on that loan is 5 per cent. per annum or higher.

(3) Where in a case to which sub-paragraph (2) applies the actual rate of interest on the loan rises to 5 per cent. per annum or higher, the standard rate applicable on that loan shall be determined in accordance with sub-paragraph (1)(a).

### **Excessive Housing Costs**

10.—(1) Housing costs which, apart from this paragraph, fall to be met under this Schedule shall be met only to the extent specified in sub-paragraph (3) where—

- (a) the dwelling occupied as the home, excluding any part which is let, is larger than is required by the claimant, his partner (if he has one), any person under the age of 19 and any other non-dependants having regard, in particular, to suitable alternative accommodation occupied by a household of the same size; or
- (b) the immediate area in which the dwelling occupied as the home is located is more expensive than other areas in which suitable alternative accommodation exists; or
- (c) the outgoings of the dwelling occupied as the home which are met under paragraphs 11 to 13 are higher than the outgoings of suitable alternative accommodation in the area.

(2) For the purposes of heads (a) to (c) of sub-paragraph (1), no regard shall be had to the capital value of the dwelling occupied as the home.

(3) Subject to the following provisions of this paragraph, the amount of the loan which falls to be met shall be restricted and the excess over the amounts which the claimant would need to obtain suitable alternative accommodation shall not be allowed.

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(4) Where, having regard to the relevant factors, it is not reasonable to expect the claimant and his partner to seek alternative cheaper accommodation, no restriction shall be made under sub-paragraph (3).

(5) In sub-paragraph (4), “the relevant factors” are—

- (a) the availability of suitable accommodation and the level of housing costs in the area; and
- (b) the circumstances of the claimant and those who live with him, including in particular the age and state of health of any of those persons, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any person below the age of 19 who lives with the claimant.

(6) Where sub-paragraph (4) does not apply and the claimant or his partner was able to meet the financial commitments for the dwelling occupied as the home when these were entered into, no restriction shall be made under this paragraph during the first 26 weeks of any period of entitlement to state pension credit nor during the next 26 weeks if and so long as the claimant uses his best endeavours to obtain cheaper accommodation or, as the case may be, no restriction shall be made under this paragraph on review during the 26 weeks from the date of the review nor during the next 26 weeks if and so long as the claimant uses his best endeavours.

(7) For the purposes of calculating any period of 26 weeks referred to in sub-paragraph (6), and for those purposes only, a person shall be treated as entitled to state pension credit for any period of 12 weeks or less in respect of which he was not in receipt of state pension credit and which fell immediately between periods in respect of which he was in receipt thereof.

(8) Any period in respect of which—

- (a) state pension credit was paid to a person, and
- (b) it was subsequently determined that he was not entitled to state pension credit for that period,

shall be treated for the purposes of sub-paragraph (7) as a period in respect of which he was not in receipt of state pension credit.

(9) Any period which falls before the appointed day in respect of which a person was entitled to income support or income-based jobseeker’s allowance shall be treated, for the purpose of calculating any period of 26 weeks or as the case may be 12 weeks mentioned in sub-paragraphs (6) and (7), as a period in respect of which he was entitled to state pension credit.

(10) References to state pension credit in sub-paragraphs (6) and (7) shall be treated as including references to income support and income-based jobseeker’s allowance in respect of any period which falls immediately before—

- (a) the appointed day; or
- (b) the day the claimant or his partner attains the qualifying age.

### **Loans on residential property**

**11.—**(1) A loan qualifies under this paragraph where the loan was taken out to defray monies applied for any of the following purposes—

- (a) acquiring an interest in the dwelling occupied as the home; or
- (b) paying off another loan to the extent that the other loan would have qualified under head (a) above had the loan not been paid off.

(2) For the purposes of this paragraph, references to a loan include also a reference to money borrowed under a hire purchase agreement for any purpose specified in heads (a) and (b) of sub-paragraph (1).

(3) Where a loan is applied only in part for the purposes specified in heads (a) and (b) of sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

### **Loans for repairs and improvements to the dwelling occupied as the home**

**12.—**(1) A loan qualifies under this paragraph where the loan was taken out, with or without security, for the purpose of—

- (a) carrying out repairs and improvements to the dwelling occupied as the home;
- (b) paying any service charge imposed to meet the cost of repairs and improvements to the dwelling occupied as the home;
- (c) paying off another loan to the extent that the other loan would have qualified under head (a) or (b) of this sub-paragraph had the loan not been paid off,

and the loan was used for that purpose, or is used for that purpose within 6 months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case.

(2) In sub-paragraph (1), “repairs and improvements” means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling—

- (a) provision of a fixed bath, shower, wash basin, sink or lavatory, and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
- (b) repairs to existing heating systems;
- (c) damp proof measures;
- (d) provision of ventilation and natural lighting;
- (e) provision of drainage facilities;
- (f) provision of facilities for preparing and cooking food;
- (g) provision of insulation of the dwelling occupied as the home;
- (h) provision of electric lighting and sockets;
- (i) provision of storage facilities for fuel or refuse;
- (j) repairs of unsafe structural defects;
- (k) adapting a dwelling for the special needs of a disabled person; or
- (l) provision of separate sleeping accommodation for persons of different sexes aged 10 or over but under age 19 who live with the claimant and for whom the claimant or partner is responsible.

(3) Where a loan is applied only in part for the purposes specified in sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

### **Other housing costs**

**13.—**(1) Subject to the deduction specified in sub-paragraph (2) and the reductions applicable in sub-paragraph (5), there shall be met under this paragraph the amounts, calculated on a weekly basis, in respect of the following housing costs—

- (a) payments by way of rent or ground rent relating to a long tenancy and, in Scotland, payments by way of feu duty;
- (b) service charges;

- (c) payments by way of rentcharge within the meaning of section 1 of the Rentcharges Act 1977<sup>(65)</sup>;
- (d) payments under a co-ownership scheme;
- (e) payments under or relating to a tenancy or licence of a Crown tenant;
- (f) where the dwelling occupied as the home is a tent, payments in respect of the tent and the site on which it stands.

(2) Subject to sub-paragraph (3), the deductions to be made from the weekly amounts to be met under this paragraph are—

- (a) where the costs are inclusive of any of the items mentioned in paragraph 5(2) of Schedule I to the Housing Benefit (General) Regulations 1987<sup>(66)</sup> (payment in respect of fuel charges), the deductions prescribed in that paragraph unless the claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, in which case the estimated amount;
- (b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule I to the Housing Benefit (General) Regulations 1987 (ineligible service charges) the amounts attributable to those ineligible service charges or where that amount is not separated from or separately identified within the housing costs to be met under this paragraph, such part of the payments made in respect of those housing costs which are fairly attributable to the provision of those ineligible services having regard to the costs of comparable services;
- (c) any amount for repairs and improvements, and for this purpose the expression “repairs and improvements” has the same meaning it has in paragraph 12(2).

(3) Where arrangements are made for the housing costs, which are met under this paragraph and which are normally paid for a period of 52 weeks, to be paid instead for a period of 53 weeks, or to be paid irregularly, or so that no such costs are payable or collected in certain periods, or so that the costs for different periods in the year are of different amounts, the weekly amount shall be the amount payable for the year divided by 52.

(4) Where the claimant or the claimant’s partner—

- (a) pays for reasonable repairs or redecorations to be carried out to the dwelling he occupies; and
- (b) that work was not the responsibility of the claimant or his partner; and
- (c) in consequence of that work being done, the costs which are normally met under this paragraph are waived,

then those costs shall, for a period not exceeding 8 weeks, be treated as payable.

(5) Where in England and Wales an amount calculated on a weekly basis in respect of housing costs specified in sub-paragraph (1)(e) (Crown tenants) includes water charges, that amount shall be reduced—

- (a) where the amount payable in respect of water charges is known, by that amount;
- (b) in any other case, by the amount which would be the likely weekly water charge had the property not been occupied by a Crown tenant.

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<sup>(65)</sup> 1977 c. 30.

<sup>(66)</sup> S.I.1987/1971.

### **Persons residing with the claimant**

**14.—**(1) Subject to the following provisions of this paragraph, the following deductions from the amount to be met under the preceding paragraphs of this Schedule in respect of housing costs shall be made—

- (a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work but is not in receipt of state pension credit, £47.75;
- (b) in respect of a non-dependant who is engaged in remunerative work and in receipt of state pension credit, £7.40;
- (c) in respect of a non-dependant aged 18 or over to whom neither head (a) or (b) applies, £7.40.

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (2)(a) applies because he is in remunerative work, where the claimant satisfies the Secretary of State that the non-dependant's gross weekly income is—

- (a) less than £88.00, the deduction to be made under this paragraph shall be the deduction specified in sub-paragraph (1)(c);
- (b) not less than £88.00 but less than £131.00, the deduction to be made under this paragraph shall be £17.00;
- (c) not less than £131.00 but less than £170.00, the deduction to be made under this paragraph shall be £23.35;
- (d) not less than £170.00 but less than £225.00, the deduction to be made under this paragraph shall be £38.20;
- (e) not less than £225.00 but less than £281.00, the deduction to be made under this paragraph shall be £43.50.

(3) Only one deduction shall be made under this paragraph in respect of partners and where, but for this sub-paragraph, the amount that would fall to be deducted in respect of one partner is higher than the amount (if any) that would fall to be deducted in respect of the other partner, the higher amount shall be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of partners, only one deduction shall be made in respect of the partners based on the partners' joint weekly income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are partners), the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the housing costs in respect of the dwelling occupied as the home payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying the dwelling occupied as the home of the claimant, if the claimant or any partner of his is—

- (a) registered as blind in a register compiled under section 29 of the National Assistance Act 1948<sup>(67)</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a regional or islands council, or who is within 28 weeks of ceasing to be so registered; or
- (b) receiving in respect of himself either—
  - (i) an attendance allowance; or
  - (ii) the care component of the disability living allowance.

(7) No deduction shall be made in respect of a non-dependant—

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(67) 1948 c. 29.

*Status: This is the original version (as it was originally made).*

- (a) if, although he resides with the claimant, it appears to the Secretary of State that the dwelling occupied as his home is normally elsewhere; or
  - (b) if he is in receipt of a training allowance paid in connection with a Youth Training Scheme established under section 2 of the Employment and Training Act 1973<sup>(68)</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(69)</sup>; or
  - (c) if he is a full-time student during a period of study or, if he is not in remunerative work, during a recognised summer vacation appropriate to his course; or
  - (d) if he is aged under 25 and in receipt of income support or an income-based jobseeker's allowance; or
  - (e) if he is not residing with the claimant because he has been a patient for a period in excess of 13 weeks, or is a prisoner; and in calculating any period of 13 weeks, any 2 or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period.
- (8) In the case of a non-dependant to whom sub-paragraph (1) applies because he is in remunerative work, there shall be disregarded from his gross income—
- (a) any attendance allowance or disability living allowance received by him;
  - (b) any payment from the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust ("the Trusts"), the Fund, the Eileen Trust or the Independent Living Funds; and
  - (c) any payment in kind.

### **Rounding of fractions**

**15.** Where any calculation made under this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

## **SCHEDULE III**

### **SPECIAL GROUPS**

#### **Polygamous marriages**

**1.—**(1) The provisions of this paragraph apply in any case to which section 12 (polygamous marriages) applies if the claimant is taken to be "the person in question" for the purposes of that section.

(2) The following provision shall apply instead of section 3(1)—

"(1) The first condition is that, if the claimant is taken the claimant to be "the person in question" for the purposes of section 12 (polygamous marriages),—

- (a) the case is one to which that section applies; and
- (b) any one or more of the persons falling within subsection (1)(c) of that section has attained the age of 65."

(3) The following provision shall apply instead of section 4(1)—

"(1) A claimant is not entitled to state pension credit if, taking the claimant to be "the person in question" for the purposes of section 12 (polygamous marriages),—

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<sup>(68)</sup> 1973 c. 50.

<sup>(69)</sup> 1990 c. 35.

- (a) the case is one to which that section applies; and
  - (b) any one or more of the other persons falling within subsection (1)(c) of that section is entitled to state pension credit.”.
- (4) The following provision shall apply instead of section 5—
  - “5. Income and capital of claimant, spouses etc.
    - (1) This section applies in any case to which section 12 (polygamous marriages) applies if the claimant is taken to be “the person in question” for the purposes of that section.
    - (2) In any such case, the income and capital of each of the other persons falling within subsection (1)(c) of that section shall be treated for the purposes of this Act as income and capital of the claimant, except where regulations provide otherwise.”.
- (5) In regulation 6 (amount of the guarantee credit), for paragraph (1) there shall be substituted—
  - “(1) Except as provided in the following provisions of these Regulations, in a case to which section 12 (polygamous marriages) applies if the claimant is taken to be “the person in question” for the purposes of that section the standard minimum guarantee is the sum of—
    - (a) £154 per week in respect of the claimant and any one spouse of the claimant's; and
    - (b) £54 per week in respect of for each additional spouse (whether of the claimant or that spouse) who falls within section 12 (1)(c).”.
- (6) The maximum savings credit shall be determined on the assumption that the standard minimum guarantee is the amount prescribed for partners under regulation 6(1)(a).
- (7) In regulation 7 (savings credit) for paragraph (2) there shall be substituted—
  - “(2) In any case to which section 12 (polygamous marriages) if the claimant is taken to be “the person in question” for the purposes of that section, the amount prescribed for the savings credit threshold is £123.”.
- (8) In regulations 3,5,10,12 and 14 and in paragraph 6(5)(b)(iv) of Schedule 1 and in Schedule 2, any reference to a partner includes also a reference to any additional spouse to whom this paragraph applies.
- (9) For the purposes of regulation 6(5)(a) and (b), paragraph 1(1)(b)(i) of Part I of Schedule I is satisfied only if both partners and each additional spouse to whom this paragraph applies are in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act.
- (10) For the purposes of regulation 6(5)(a), paragraph 1(1)(c) of Part I of Schedule 1 is only satisfied if—
  - (a) both partners and each additional spouse to whom this paragraph applies all fall within either paragraph 1(1)(c)(i) or paragraph 1(1)(c)(ii); and
  - (b) at least one of them falls within paragraph 1(1)(c)(i); and
  - (c) at least one of them falls within paragraph 1(1)(c)(ii) but not paragraph 1(1)(c)(i); and
  - (d) either paragraph 1(1)(c)(iv) is satisfied or a person is entitled to and in receipt of an allowance under section 70 of the 1992 Act in respect of caring for one or more, but not all, the persons who fall within paragraph 1(1)(c)(i).
- (11) Any reference in this paragraph to an additional spouse to whom this paragraph applies is a reference to any person who is an additional spouse (whether of the claimant's or of a spouse of the claimant's) falling within subsection (1)(c) of section 12 if the claimant is taken to be “the person in question” for the purposes of that section.

**Further provisions in the case of patients**

2.—(1) Sub-paragraph (2) applies in the case of—

- (a) a claimant who; or
- (b) a claimant who has a partner one or both of whom; or
- (c) a claimant who is a member of a polygamous marriage one or more of whose members, is or are a patient, and has or have been a patient for a period exceeding 13 weeks but not exceeding 52 weeks, or, in exceptional circumstances, is unlikely to substantially exceed 52 weeks (“long term patient”).

(2) In the case of a claimant to whom paragraph (1) applies and who—

- (a) has no partner, section 2(3) has effect with the substitution for the reference to the standard minimum guarantee in paragraph (a) of a reference to an amount determined by taking the amount for the time being specified in regulation 6(1)(b) and reducing it by an amount equal to 38 per cent. of the weekly rate of the basic pension for the time being specified in section 44(4) of the 1992 Act;
- (b) has a partner and one of the partners is a long term patient, section 2(3) has effect with the substitution for the reference to the standard minimum guarantee in paragraph (a) of a reference to an amount determined by taking the amount for the time being specified in regulation 6(1)(a) and reducing it by an amount equal to 20 per cent. of the weekly rate of the basic pension for the time being specified in section 44(4) of the 1992 Act (“the standard reduction”);
- (c) has a partner and both partners are long term patients, section 2(3) has effect with the substitution for the reference to the standard minimum guarantee in paragraph (a) of a reference to an amount determined by taking the amount for the time being specified in regulation 6(1)(a) and reducing it by an amount equal to twice the sum of the standard reduction;
- (d) is a member of a polygamous marriage and one or more members of the marriage are long term patients, section 2(3) has effect with the substitution for the reference to the standard minimum guarantee in paragraph (a) of a reference to an amount determined by taking the amount for the time being specified in regulation 6(1)(a) and (b), as substituted by paragraph 1(5), for the members of the marriage and reducing it by an amount equal to the standard reduction multiplied by the number of members who are long term patients.

(3) In the case of a claimant who—

- (a) has no partner; and
- (b) is a patient and has been a patient for 52 weeks or more,

section 2(3) has effect with the substitution for the reference to the standard minimum guarantee in paragraph (a) of a reference to an amount equal to the amount of the standard reduction.

(4) For the purposes of sub-paragraphs (2) and (3), the basic pension shall be rounded to the nearest 5 pence, 2.5 pence being rounded to the next 5 pence above.

(5) For any period in respect of which sub-paragraph (2) or (3) applies to a claimant, “amount B” in section 3(4) (savings credit) shall have effect with the substitution in paragraph (a) to the appropriate minimum guarantee of a reference to an amount determined—

- (a) by taking the amount for the time being prescribed under section 2(4); and
- (b) adding to it such amount (if any) as may be applicable in his case in accordance with section 2(3)(b);

and the claimant’s income for the purposes of section 3 shall be determined as if the reductions specified in sub-paragraph (2) do not apply in his case.



(6) In calculating for the purpose of this regulation periods of 13 weeks and 52 weeks, any periods separated by 28 days or less in which a person is a patient shall link to form one single such period.

## SCHEDULE IV

Regulation 17(7)

### AMOUNTS TO BE DISREGARDED IN THE CALCULATION OF INCOME OTHER THAN EARNINGS

1. In addition to any sum which falls to be disregarded in accordance with paragraphs 3 to 6, £10 of any of the following, namely—

- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 2 or 3);
- (b) a war widow's or war widower's pension;
- (c) a pension payable to a person as a widow under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983<sup>(70)</sup> insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865<sup>(71)</sup> or the Pensions and Yeomanry Pay Act 1884<sup>(72)</sup>, or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977<sup>(73)</sup> and any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- (d) a payment made to compensate for the non-payment of such a pension as is mentioned in any of the preceding sub-paragraphs;
- (e) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions mentioned in sub-paragraphs (a) to (c) above;
- (f) a pension paid to victims of National Socialist persecution 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.

2. The whole of any amount included in a pension to which paragraph 1 relates in respect of—

- (a) the claimant's need for constant attendance;
- (b) the claimant's exceptionally severe disablement.

3. Any mobility supplement under article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983<sup>(74)</sup> or any payment intended to compensate for the non-payment of such a supplement.

4. Any supplementary pension under article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

5. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983<sup>(75)</sup> (pensions to widows), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

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<sup>(70)</sup> S.I.1983/883.

<sup>(71)</sup> 1865 c. 73.

<sup>(72)</sup> 47 & 48 Vict. c. 55.

<sup>(73)</sup> 1977 c. 5.

<sup>(74)</sup> S.I. 1983/686; amended by S.I. 1983/1164 and 1540 and 1986/628.

<sup>(75)</sup> S.I.1983/686; the relevant amending Instruments are S.I.1994/715 and 2021.

**6.—(1)** Any payment which is—

- (a) made under any of the Dispensing Instruments to a widow of a person—
  - (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
  - (ii) whose service in such capacity terminated before 31st March 1973; and
- (b) equal to the amount specified in article 29(1A) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

(2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances).

**7.** £10 of any widowed parent’s allowance to which the claimant is entitled under section 39A of the 1992 Act<sup>(76)</sup>.

**8.—(1)** Where the claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to—

- (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20.00, 100% of such payments; or
- (b) where the aggregate of any such payments exceeds £20.00, £20.00 and 50% of the excess over £20.00.

(2) In this paragraph “board and lodging accommodation” means accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises.

**9.** If the claimant—

- (a) owns the freehold or leasehold interest in any property or is a tenant of any property; and
- (b) occupies a part of that property; and
- (c) has an agreement with another person allowing that person to occupy another part of that property on payment of rent and—
  - (i) the amount paid by that person is less than £20 per week, the whole of that amount; or
  - (ii) the amount paid is £20 or more per week, £20.

**10.** Where a claimant 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 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;
- (c) 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;

<sup>(76)</sup> Section 39A was inserted by section 55 of the Welfare Reform and Pensions Act 1999 (c. 30).

- (d) 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; and
- (e) that the interest payable on the loan is paid by the person to whom the loan was made or by one of the annuitants,

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

- (i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988<sup>(77)</sup> (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;
- (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

**11.—**(1) Any payment, other than a payment to which sub-paragraph (2) applies, made to the claimant by Trustees in exercise of a discretion exercisable by them.

(2) This sub-paragraph applies to payments made to the claimant by Trustees in exercise of a discretion exercisable by them for the purpose of—

- (a) obtaining food, ordinary clothing or footwear or household fuel;
- (b) the payment of rent, council tax or water charges for which that claimant or his partner is liable;
- (c) meeting housing costs of a kind specified in Schedule 2;
- (d) meeting any fees payable by or on behalf of the claimant or his partner to a care home.

(3) In a case to which sub-paragraph (2) applies, £20 or—

- (a) if the payment is less than £20, the whole payment; or
- (b) if, in the claimant's case, £10 is disregarded in accordance with paragraph 1(a) to (f), £10 or the whole payment if it is less than £10.

(4) For the purposes of this paragraph—

“ordinary clothing and footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing and footwear used solely for sporting activities; and  
“rent” means eligible rent for the purposes of the Housing Benefit (General) Regulations 1987<sup>(78)</sup> less any deductions in respect of non-dependants which fall to be made under regulation 63 (non-dependant deductions) of those Regulations.

**12.** Any increase in pension under Part IV of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983<sup>(79)</sup> paid in respect of a dependent other than the pensioner's spouse.

**13.** Any payment ordered by a court to be made to the claimant or the claimant's partner in consequence of any accident, injury or disease suffered by the partner to whom the payments are made.

**14.** Periodic payments made to the claimant or the claimant's partner under an agreement entered into in final settlement of a claim made by the partner for an injury suffered by him.

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

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<sup>(77)</sup> 1988 c. 1; subsection (1A) was inserted by the Finance Act 1994 (c. 9), section 81(3).

<sup>(78)</sup> S.I. 1987/1971; see regulations 2(1) and 10.

<sup>(79)</sup> S.I.1983/883.

16. Any banking charges or commission payable in converting to Sterling payments of income made in a currency other than Sterling.

## SCHEDULE V

Regulation 17(8)

### INCOME FROM CAPITAL

#### PART I

#### **Capital disregarded for the purpose of calculating income**

1. Any premises acquired for occupation by the claimant which he intends to occupy as his home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises.

2. Any premises which the claimant intends to occupy as his home, and 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 of those premises.

3. Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

4. Any premises occupied in whole or in part—

- (a) by a partner or close relative of a single claimant as his home where that person is either aged 60 or over or incapacitated;
- (b) by the former partner of the claimant as his home; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced.

5. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.

6.—(1) Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home 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 as the home by the former partner who is a lone parent, for so long as it is so occupied.

(2) In this paragraph—

- (a) “dwelling” includes any garage, garden and outbuildings, which were formerly occupied by the claimant as his home and 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;
- (b) “lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child; and
- (c) “child” means a person treated as a child for the purposes of Part IX of the 1992 Act<sup>(80)</sup>.

<sup>(80)</sup> See section 142(1) of the 1992 Act.

7. Any premises where the claimant is taking reasonable steps to dispose of the whole of his interest in 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.

8. All personal possessions.

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

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

11. The value of any funeral plan contract; and for this purpose, “funeral plan contract” means a contract under which—

- (a) the claimant makes one or more payments to another person (“the provider”);
- (b) the provider undertakes to provide, or secure the provision of, a funeral in the United Kingdom for the claimant on his death; and
- (c) the sole purpose of the plan is to provide or secure the provision of a funeral for the claimant on his death.

12. Where an ex-gratia payment has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or interment of—

- (a) the claimant;
- (b) the claimant’s partner;
- (c) the claimant’s deceased spouse; or
- (d) the claimant’s partner’s deceased spouse,

by the Japanese during the Second World War, an amount equal to that payment.

13.—(1) Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a claimant’s partner where one of the partners—

- (a) is a diagnosed person;
- (b) was a diagnosed person’s partner at the time of the diagnosed person’s death;
- (c) is a parent of a diagnosed person, a person acting in place of the diagnosed person’s parents or a person who was so acting at the date of the diagnosed person’s death.

(2) Where—

- (a) sub-paragraph (1)(a) or (b) applies, it shall apply for the period beginning on the date on which the trust is made and ending on the date on which the partner dies;
- (b) sub-paragraph (1)(c) applies, it shall apply for the period beginning on the date on which the trust payment is made and ending two years after that date.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to a claimant or a claimant’s partner where one of the partners—

- (a) is the diagnosed person;
- (b) was a diagnosed person’s partner at the date of the diagnosed person’s death; or
- (c) is a parent of a diagnosed person, a person acting in place of the diagnosed person’s parents or a person who was so acting at the date of the diagnosed person’s death.

(4) Where—

*Status: This is the original version (as it was originally made).*

- (a) sub-paragraph (3)(a) or (b) applies, it shall apply for the period beginning on the date on which the payment is made and ending on the date on which the partner dies;
- (b) sub-paragraph (3)(c) applies, it shall apply for the period beginning on the date on which the payment is made and ending two years after that date.

(5) In this paragraph, a reference to a person—

- (a) being the diagnosed person's partner;
- (b) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person being in a care home.

(6) In this paragraph—

“diagnosed person” means a person who has been diagnosed as suffering from, or who, after his death, has been diagnosed as having suffered from, variant Creutzfeld-Jakob disease;

“relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeld-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

“trust payment” means a payment under a relevant trust.

**14.** The amount of any payment, other than a war disablement pension or a war widow's or widower's pension, to compensate for the fact that the claimant, the claimant's partner, the claimant's deceased spouse or the claimant's partner's deceased spouse—

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

during the Second World War.

**15.—(1)** Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), the Fund, the Eileen Trust or the Independent Living Funds.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of the person who is suffering from haemophilia or who is a qualifying person.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child who is or had been a member of that person's household; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent, or

- (ii) where that person at the date of the payment is a child or a student who has not completed his full-time education and has no parent or step-parent, to any person standing in the place of his parent,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced, nor any child who was or had been a member of his household; and

- (b) the payment is made either—

- (i) to that person's parent or step-parent, or

- (ii) where that person at the relevant date was a child or a student who had not completed his full-time education and had no parent or step-parent, to any person standing in place his parent,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund and the Eileen Trust.

(8) In this paragraph—

“child” means any person treated as a child for the purposes of Part IX of the Contributions and Benefits Act<sup>(81)</sup> (child benefit);

“course of study” means any course of study, whether or not it is a sandwich course and whether or not a grant is made for undertaking or attending it;

“qualifying course” means a qualifying course as defined for the purposes of Parts II and IV of the Jobseeker's Allowance Regulations;

“sandwich course” has the meaning given in regulation 5(2) of the Education (Student Support) Regulations 2001<sup>(82)</sup>, regulation 5(2) of the Education (Student Loans) (Scotland) Regulations 2000<sup>(83)</sup> or regulation 5(2) of the Education (Student Support) Regulations (Northern Ireland) 2000<sup>(84)</sup>, as the case may be;

“student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking—

- (a) a course of study at an educational establishment; or

- (b) a qualifying course;

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise;

- (b) to a person for his maintenance or in respect of a member of his family; and

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<sup>(81)</sup> See section 142 of the Social Security Contributions and Benefits Act 1992 (c. 4).

<sup>(82)</sup> S.I.2000/951.

<sup>(83)</sup> S.S.I.2000/200.

<sup>(84)</sup> S.R.2000/213.

- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise, but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education, other than under arrangements made under section 2 of the Employment and Training Act 1973<sup>(85)</sup> or is training as a teacher nor does it include any top-up payment made to a person (“the participant”) pursuant to—
  - (i) section 2 of the Employment and Training Act 1973 in respect of the participant’s participation in the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 1999<sup>(86)</sup> in regulation 2(1) of those Regulations (“the intensive activity period”); or
  - (ii) a written arrangement entered into between the Secretary of State and the person who has arranged for the participant’s participation in the intensive activity period and which is made in respect of the participant’s participation in that period.
- 16.** An amount equal to the amount of any payment made in consequence of any personal injury to the claimant or, if the claimant has a partner, to the partner.
- 17.** Any amount specified in paragraphs 18 to 20—
  - (a) in a case where there is an assessed income period, until the end of that period or until the expiration of one year from the date of payment, whichever is the later; or
  - (b) in any other case, for a period of one year beginning with the date of receipt.
- 18.** Amounts paid under a policy of insurance in connection with the loss of or damage to the property occupied by the claimant as his home and to his personal possessions.
- 19.** So much of any amounts paid to the claimant or deposited in the claimant’s name for the sole purpose of—
  - (a) purchasing premises which the claimant intends to occupy as his home; or
  - (b) effecting essential repairs or alterations to the premises occupied or intended to be occupied by the claimant as his home.
- 20.—(1)** Any amount paid—
  - (a) by way of arrears of benefit;
  - (b) by way of compensation for the late payment of benefit; or
  - (c) in lieu of the payment of benefit.
 (2) In paragraph (1), “benefit” means—
  - (a) attendance allowance under section 64 of the Contributions and Benefits Act;
  - (b) disability living allowance;
  - (c) income support;
  - (d) income-based jobseeker’s allowance;
  - (e) housing benefit;
  - (f) state pension credit;

<sup>(85)</sup> 1973 c. 50; section 2 was amended by section 25(1) of the Employment Act 1988 (c. 19), by Part I of Schedule 7 to the Employment Act 1989 (c. 38) and by section 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

<sup>(86)</sup> S.I.1999/3156.



- (g) an allowance under section 70 of the 1992 Act (invalid care allowance);
- (h) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part I of Schedule 8 to the Act;
- (i) any amount included on account of the claimant's exceptionally severe disablement in a war disablement pension or a war widow's or widower's pension.

**21.** Where a capital asset is held in a currency other than sterling, any banking charge or commission payable in converting that capital into sterling.

**22.** The value of the right to receive income from an occupational pension scheme or a personal pension scheme.

**23.** The value of a right to receive income from a under a retirement annuity contract.

## PART II

### **Capital disregarded only for the purposes of determining notional income**

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

**25.** The value of the right to receive any rent except where the claimant has a reversionary interest in the property in respect of which rent is due.

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

**27.** The dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home, including any premises not so occupied which it is impracticable or unreasonable to sell separately and in particular, in Scotland, any croft land on which the dwelling is situated; but only one dwelling shall be disregarded under this paragraph.

**28.** Where property is held under a trust, other than—

- (a) a charitable trust within the meaning of the Charities Act 1993<sup>(87)</sup>; or
- (b) a trust set up with any payment to which paragraph 16 of this Schedule applies,

and under the terms of the trust, payments fall to be made, or the trustees have a discretion to make payments, to or for the benefit of the claimant or the claimant's partner, or both, that property.

## SCHEDULE VI

Regulation 17(9)

### SUMS DISREGARDED FROM CLAIMANT'S EARNINGS

**1.—**(1) In a case where a claimant is a lone parent, £20 of earnings.

(2) In this paragraph—

- (a) “lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child;
- (b) “child” means a person treated as a child for the purposes of Part IX of the 1992 Act<sup>(88)</sup>.

**2.** In a case of earnings from employment to which sub-paragraph (2) applies, £20.

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<sup>(87)</sup> 1993 c. 10.

<sup>(88)</sup> See section 142(1) of the 1992 Act.

*Status: This is the original version (as it was originally made).*

(2) This paragraph applies to employment—

- (a) as a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Acts 1947 to 1959<sup>(89)</sup>;
- (b) as an auxiliary coastguard in respect of coast rescue activities;
- (c) in the manning or launching of a lifeboat if the employment is part-time.

3.—(1) If the claimant or one of the partners is a carer, or both partners are carers, £20 of any earnings received from his or their employment.

(2) In this paragraph the claimant or his partner is a carer if paragraph 4 of Part II of Schedule I (amount applicable for carers) is satisfied in respect of him.

4.—(1) £20 is disregarded if the claimant or, if he has a partner, his partner—

- (a) is in receipt of—
  - (i) long-term incapacity benefit under Section 30A of the 1992 Act<sup>(90)</sup>;
  - (ii) severe disablement allowance under section 68 of that Act;
  - (iii) attendance allowance;
  - (iv) disability living allowance under section 71 to 76 of that Act;
  - (v) any mobility supplement under article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983<sup>(91)</sup> (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983<sup>(92)</sup>; or
- (b) is or are registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948<sup>(93)</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a regional or islands council.

(2) Subject to sub-paragraph (4), £20 is disregarded if the claimant or, if he has a partner, his partner has, within a period of 8 weeks ending on the day in respect of which the claimant first satisfies the conditions for entitlement to state pension credit, had an award of income support or income-based jobseeker's allowance and—

- (a) £20 was disregarded in respect of earnings taken into account in that award;
- (b) the person whose earnings qualified for the disregard continues in employment after the termination of that award.

(3) Subject to sub-paragraph (4), £20 is disregarded if the claimant or, if he has a partner, his partner, immediately before attaining pensionable age,—

- (a) had an award of state pension credit; and
- (b) a disregard under paragraph 4(1)(a)(i) or (ii) was taken into account in determining that award.

(4) The disregard of £20 specified in sub-paragraphs (2) and (3) applies so long as there is no break, other a break which does not exceed 8 weeks,—

<sup>(89)</sup> 1947 c. 41.

<sup>(90)</sup> Section 30A was inserted by Social Security (Incapacity for Work) Act 1994 (c. 18).

<sup>(91)</sup> S.I.1983/883.

<sup>(92)</sup> S.I.1983/686; amended by S.I.1983/1164 and 1540 and 1986/628.

<sup>(93)</sup> 1948 c. 29.

- (a) in a case to which sub-paragraph (2) refers, in a person's entitlement to state pension credit or in employment following the first day in respect of which state pension credit is awarded; or
  - (b) in a case where sub-paragraph (3) applies, in the person's entitlement to state pension credit since attaining pensionable age.
- (5) £20 is the maximum amount which may be disregarded under any sub-paragraph of this paragraph, notwithstanding that in the case of married or unmarried couples, both partners satisfy the requirements of that sub-paragraph.
5. Except where the claimant or his partner qualifies for a £20 disregard under the preceding provisions of this Schedule—
- (a) £5 shall be disregarded if a claimant who has no partner has earnings;
  - (b) £10 shall be disregarded if a claimant who has a partner has earnings.
6. Any earnings derived from any employment which ended before the day in respect of which the claimant first satisfies the conditions for entitlement to state pension credit.

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## EXPLANATORY NOTE

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

The Regulations contained in this Instrument are made either by virtue of, or in consequence of, provisions in the State Pension Credit Act 2002 (c. 16) (“the 2002 Act”). This Instrument is made before the expiry of the period of 6 months beginning with the coming into force of those provisions; the regulations in it are therefore exempt in accordance with section 173(5) of the Social Security Administration Act 1992 from the requirement in section 172(2) of that Act to refer proposals to make Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

Part I of these Regulations contains provisions relating to citation, commencement and interpretation.

In Part II of the Regulations, regulations 2 to 5 contain provisions relating to claimants who are absent from Great Britain. Regulations 6 and 7 relate to the amounts of the guarantee credit and savings credit. Provision is included for additional amounts to be included when the claimant or his partner is severely disabled or has housing costs (Schedules 1 and 2).

Regulation 9 specifies the income which is to be taken into account in determining the amount of any savings credit.

Under section 6 of the 2002 Act, assessed income periods are with certain exceptions set when a decision is made awarding state pension credit. Regulations 10 and 12 contain provisions relating to changes in income during the assessed income period and to the ending of that period.

Part III of the regulations contains provision for the calculation of income and capital. “Income” is defined for the purpose of the 2002 Act in section 15(1) of that Act but contains powers enabling further provisions to be made in Regulations. Regulation 15 contains provisions about income, including (at regulation 15(6)) provision for a deemed weekly income on capital over £6,000 (£10,000 if the claimant is in certain residential accommodation) at a rate of £1 for every £500. Other provisions relate to notional income (regulation 18) and income paid to third parties (regulation 24).

**Status:** This is the original version (as it was originally made).

Regulations 20 to 24 contain provisions relating to the calculation of capital, including capital held outside the United Kingdom, capital jointly held and notional capital; regulation 22 provides for a diminishing notional capital rule. Schedules 4 to 6 provide for certain capital and income to be disregarded in the calculation of the claimant's capital and income.

Part IV contains separate provision relating to the reduction in state pension credit in a case where the claimant has been convicted of benefit offences on at least 2 separate occasions.

The impact on business of applying these Regulations is minimal and the publication of a regulatory impact assessment is therefore not necessary. A summary of the contents of the assessment made for the State Pension Credit Bill was published at paragraphs 183 and 184 of the Explanatory Notes relating to the Bill. A copy of the summary can be obtained from the Department for Work and Pensions, Regulatory Impact Unit, 3rd Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.