
STATUTORY INSTRUMENTS

2002 No. 2006

TAX CREDITS

**The Tax Credits (Definition and
Calculation of Income) Regulations 2002**

Made - - - - 30th July 2002

Coming into force in accordance with regulation 1

Whereas a draft of this instrument, which contains the first regulations made under section 7(8) and (9) of the Tax Credits Act 2002(1), has been laid before, and approved by resolution of, each House of Parliament:

Now, therefore, the Treasury, in exercise of the powers conferred upon them by sections 7(8) and (9), 65(1), (7) and (9) and 67 of the Tax Credits Act 2002(2), hereby make the following Regulations:

PART 1

General Provisions

Citation, commencement and effect

1. These Regulations may be cited as the Tax Credits (Definition and Calculation of Income) Regulations 2002 and shall come into force—

- (a) for the purpose of enabling claims to be made, on 1st August 2002;
- (b) for the purpose of enabling awards to be made, on 1st January 2003; and
- (c) for all other purposes, on 6th April 2003;

and shall have effect for the tax year beginning on 6th April 2003 and subsequent tax years.

Interpretation

- 2.—(1) In these Regulations, unless the context otherwise requires—
“the Act” means the Tax Credits Act 2002;

(1) 2002 c. 21.

(2) Section 67 is cited because of the meaning ascribed to “prescribed”.

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(3); and

“the Employment Act” means the Employment and Training Act 1973(4).

(2) In these Regulations except where the context otherwise requires—

“the 1992 Fund” means moneys made available from time to time by the Secretary of State for Social Security for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by him on 24th April 1992 as respects England and Wales and Northern Ireland and on 10th April 1992 as respects Scotland;

“the Board” means the Commissioners of Inland Revenue;

“child” has the meaning given in the Child Tax Credit Regulations 2002(5);

“claim” means a claim for child tax credit or working tax credit and “joint claim” and “single claim” shall be construed in accordance with section 4(6) of the Act and “claimant” shall be construed accordingly;

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

“emoluments” shall be construed in accordance with section 131 of the Taxes Act;

“employment zone” means an area within Great Britain designated by the Employment Zones Regulations 2000(6) for the purposes of section 60 of the Welfare Reform and Pensions Act 1999(7);

“employment zone programme” means a programme which is—

- (a) established for one or more employment zones, and
- (b) designed to assist claimants for a jobseeker’s allowance to obtain sustainable employment;

“family” means—

- (c) in the case of a joint claim, the married or unmarried couple by whom the claim is made and any child or qualifying young person for whom at least one of them is responsible, in accordance with regulation 3 of the Child Tax Credit Regulations 2002(8); and
- (d) in the case of a single claim, the claimant and any child or qualifying young person for whom he is responsible in accordance with regulation 3 of the Child Tax Credit Regulations 2002;

“the Independent Living Fund” means the charitable trust of that name established out of funds provided by the Secretary of State for Social Services 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 on 25th February 1993 by the Secretary of State for Social Security and Robin Glover Wendt and John Fletcher Shepherd;

(3) 1992 c. 4.
(4) 1973 c. 50.
(5) S.I. 2002/2007.
(6) S.I. 2000/721.
(7) 1999 c. 30.
(8) S.I. 2002/2007.

“the Independent Living (1993) Fund” means the trust of that name established on 25th February 1993 by the Secretary of State for Social Security and Robin Glover Wendt and John Fletcher Shepherd;

“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 Health 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 Health 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 for Health to the Haemophilia Society for the relief of poverty or distress among those suffering from haemophilia;

“the Macfarlane Trusts” means the Macfarlane Trust, the Macfarlane (Special Payments) Trust and the Macfarlane (Special Payments) (No. 2) Trust;

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995⁽⁹⁾;

“pension fund holder”, in relation to a personal pension scheme or a retirement annuity contract, means the trustees, managers or scheme administrators of the scheme or contract;

“personal pension scheme”—

(e) has the meaning given by section 1 of the Pensions Schemes Act 1993⁽¹⁰⁾ or section 1 of the Pension Schemes (Northern Ireland) Act 1993⁽¹¹⁾; and

(f) includes a scheme approved by the Board under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988⁽¹²⁾;

“qualifying young person” has the meaning given in the Child Tax Credit Regulations 2002;

“retirement annuity contract” means a contract or trust scheme approved by the Board under or by virtue of any provision of Chapter 3 of Part 14 of the Taxes Act;

“retirement benefits scheme” has the meaning given in section 611 of the Taxes Act⁽¹³⁾;

“Schedule D” means the Schedule set out in section 18 of the Taxes Act⁽¹⁴⁾;

“Schedule E” means the Schedule set out in section 19 of the Taxes Act⁽¹⁵⁾;

“the Service Pensions Order” means the Naval, Military and Air Forces, etc. (Disablement and Death) Service Pensions Order 1983⁽¹⁶⁾;

“tax year” means a period beginning with the 6th April in one year and ending with 5th April in the next;

“the Taxes Act” means the Income and Corporation Taxes Act 1988;⁽¹⁷⁾

“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

⁽⁹⁾ 1995 c. 26.

⁽¹⁰⁾ 1993 c. 48.

⁽¹¹⁾ 1993 c. 49.

⁽¹²⁾ 1988 c. 1.

⁽¹³⁾ Section 611 has been amended by paragraph 9 of Schedule 10 to the Finance Act 1999 and paragraphs 1 and 4 of Schedule 13, and Part II(4) of Schedule 40 to the Finance Act 2000.

⁽¹⁴⁾ Relevant amendments to section 18 are those made by paragraph 2 of Schedule 6 to the Finance Act 1995 (c. 4) and paragraphs 4 and 32 of Schedule 7 to the Finance Act 1996.

⁽¹⁵⁾ Paragraph 4A was inserted into Schedule E by section 36 of the Finance Act 1989. Cases I, II and III of Schedule E were substituted by section 39(1)(c) of that Act. Paragraph 2 of Schedule E was amended by paragraph 5 of Schedule 7 to the Finance Act 1996. Section 19(1) was partly repealed by section 63(3) of the Finance Act 1998.

⁽¹⁶⁾ S.I. 1983/883.

⁽¹⁷⁾ 1988 c. 1.

“war pension” has the meaning given in section 25(4) of the Social Security Act 1989⁽¹⁸⁾.

(3) For the purposes of these Regulations, whether a person is responsible for a child or a qualifying young person is determined in accordance with regulation 3 of the Child Tax Credit Regulations 2002.

(4) In these Regulations—

- (a) a reference to a claimant’s partner is a reference to a claimant’s spouse or a person with whom the claimant lives as a spouse; and
- (b) a reference to a claimant’s former partner is a reference to a claimant’s former spouse or a person with whom the claimant has lived as a spouse; and
- (c) a reference in these Regulations to an Extra Statutory Concession is a reference to that Concession as published by the Inland Revenue on 1st July 2002⁽¹⁹⁾.

PART 2

Income for the purposes of tax credits

CHAPTER 1

General

Calculation of income of claimant

3.—(1) The manner in which income of a claimant or, in the case of a joint claim, the aggregate income of the claimants, is to be calculated for a tax year for the purposes of Part 1 of the Act is as follows.

Step One

Calculate and then add together—

- (a) the pension income (as defined in regulation 5(1)),
- (b) the investment income (as defined in regulation 10),
- (c) the property income (as defined in regulation 11),
- (d) the foreign income (as defined in regulation 12) and
- (e) the notional income (as defined in regulation 13)

of the claimant, or, in the case of a joint claim, of the claimants.

If the result of this step is £300 or less, it is treated as nil.

If the result of this step is more than £300, only the excess is taken into account in the following steps.

Step Two

Calculate and then add together—

- (a) the employment income (as defined in regulation 4),
- (b) the social security income (as defined in regulation 7),

⁽¹⁸⁾ 1989 c. 24.

⁽¹⁹⁾ Copies of Inland Revenue Extra-Statutory Concessions may be obtained from the Inland Revenue Leaflets and booklets Orderline, PO Box 37, Saint Austell, Cornwall, PL25 5YN. They are also available on the Inland Revenue’s website (<http://www.inlandrevenue.gov.uk>).

(c) the student income (as defined in regulation 8) and
(d) the miscellaneous income (as defined in regulation 18)
of the claimant, or in the case of a joint claim, of the claimants.

Step Three

Add together the results of Steps One and Two.

Step Four

Calculate the trading income (as defined in regulation 6) of the claimant, or in the case of a joint claim, of the claimants.

Add the result of this step to that produced by Step Three, unless there has been a trading loss in the year.

If there has been a trading loss in the year, subtract the amount of that loss from the result of Step Three.

(2) Subject to the qualifications in the following paragraphs of this regulation, and the provisions of Part 3, the result of Step Four in paragraph (1) is the income of the claimant, or, in the case of a joint claim, of the claimants, for the purposes of the Act.

(3) Income which—

- (a) arises in a territory outside the United Kingdom and
- (b) is, for the time being, unremittable for the purposes of section 584 of the Taxes Act⁽²⁰⁾,

is disregarded in calculating the income of the claimant or, in the case of a joint claim, of the claimants.

(4) Paragraph (5) applies in the case of a claimant who is—

- (a) resident but neither ordinarily resident nor domiciled in the United Kingdom, or
- (b) resident and ordinarily resident but not domiciled in the United Kingdom.

(5) In the case of a person to whom this paragraph applies—

- (a) any income arising outside the United Kingdom is to be taken into account, subject to any specific provision of these Regulations, regardless of—
 - (i) the domicile or residence of the claimant; or
 - (ii) the provision of any Order in Council under section 788 of the Taxes Act (double taxation agreements)⁽²¹⁾; and
- (b) references to a sum being taxable are to be construed as including a sum which would be taxable if he were resident, ordinarily resident and domiciled in the United Kingdom.

(6) In the case of a claimant who would be chargeable to income tax but for some special exemption or immunity from income tax, income shall be calculated on the basis of the amounts which would be so chargeable but for that exemption or immunity.

(7) In calculating income under this Part there shall be deducted the amount of—

- (a) any banking charge or commission payable in converting to sterling a payment of income which is made in a currency other than sterling;

⁽²⁰⁾ Relevant amendments to section 584 have been made by section 134 of, and paragraph 33 of Schedule 20 to the Finance Act 1996 (c. 8).

⁽²¹⁾ Section 788(5) was amended by paragraphs 1 and 2 of Schedule 30 to the Finance Act 2000 (c. 17).

- (b) any qualifying donation (within the meaning of section 25 of the Finance Act 1990 (donations to charity by individuals)(**22**)), made by the claimant or, in the case of a joint claim, by either or both of the claimants; and
- (c) any contribution made by the claimant, or in the case of a joint claim, by either or both of the claimants to—
 - (i) a retirement benefits scheme approved under Chapter 1 of Part 14 of the Taxes Act, including a pilots benefit fund approved under section 607 of that Act(**23**) and a relevant statutory scheme within the meaning of section 611A of that Act(**24**);
 - (ii) a retirement annuity contract approved under Chapter 3 of Part 14 of that Act; or
 - (iii) a personal pension scheme, approved under Chapter 4 of that Part 14 of that Act.

CHAPTER 2

Employment Income

Employment income

- 4.—(1) In these regulations “employment income” means—
- (a) any emoluments from an office or employment received in the tax year;
 - (b) so much of any payment made to a claimant in that year in respect of expenses as is chargeable to income tax under section 19(1) or 153 of the Taxes Act;
 - (c) any non-cash voucher received by the claimant in that year and chargeable to income tax under section 141 of the Taxes Act(**25**);
 - (d) any credit-token received by the claimant in that year and chargeable to income tax under section 142 of the Taxes Act(**26**);
 - (e) any cash voucher received by the claimant in that year and chargeable to income tax under section 143 of the Taxes Act(**27**);
 - (f) so much of a payment under the Employment Rights Act 1996(**28**) as is chargeable to income tax under section 148 of the Taxes Act;
 - (g) so much of a payment of statutory sick pay, received by the claimant during the year, as is subject to income tax under Schedule E by virtue of section 150(c) of the Taxes Act(**29**);
 - (h) the amount (if any) by which a payment of statutory maternity pay exceeds £100 per week;
 - (i) any amount charged to income tax for that year under section 157 of the Taxes Act (car made available for private use) or section 158 of that Act (car fuel);
 - (j) any sum to which section 313 of the Taxes Act (taxation of consideration for certain restrictive undertakings)(**30**) applies;

(22) Section 25 has been partly repealed by section 71(5) and (6) of the Finance Act 1991 (c. 31) and amended by subsections (1) to (7) and (10) of section 39 of the Finance Act 2000.

(23) Section 607 was amended by section 104(2) and (3) of the Finance Act 1994 (c. 9).

(24) Section 611A was inserted by paragraph 15 of Schedule 5 to the Finance Act 1989 (c. 26) and amended by paragraph 5 of Schedule 5 to the Finance Act 1999 (c. 16).

(25) Section 141 was amended by sections 46 and 47 of the Finance Act 1988 (c. 39), paragraph 46 of Schedule 18 to the Companies Act 1989 (c. 40), section 89(1) to (3) of the Finance Act 1994 and sections 91(2) and (3) and 93(1) and (5) of the Finance Act 1995.

(26) Section 142 was amended by sections 46 and 48 of the Finance Act 1988, section 89(4) to (7) of the Finance Act 1994 and sections 91(2) and (3) and 93(1) and (5) of the Finance Act 1995.

(27) Section 143 was amended by section 89(8) to (11) of the Finance Act 1994.

(28) 1996 c. 8.

(29) There is an amendment not relevant for present purposes. To the extent that it is paid by an employer statutory sick pay is an emolument falling within Schedule E.

(30) Section 313 was amended by section 73 of the Finance Act 1988.

- (k) any amount paid in that year by way of strike pay to the claimant as a member of a trade union.

For the purposes of this paragraph, references to the receipt of a payment of any description are references to its receipt by or on behalf of the claimant, or in the case of a joint claim of either of the claimants, in any part of the world.

This paragraph is subject to the following qualifications.

- (2) Employment income does not include pension income.

- (3) This paragraph applies in the case of a claimant who is in employment to which Chapter 2 of Part 5 of the Taxes Act applies.

Where this paragraph applies, and the cash equivalent of an emolument chargeable to income tax under section 154 of the Taxes Act, calculated in accordance with subsection (2), (3) or (4) of section 156 of that Act, is greater than the value of the emolument calculated otherwise than in accordance with those provisions (“the lesser value”), the amount produced by them shall be taken into account and the lesser value disregarded.

- (4) In calculating employment income, the payments and benefits listed in Table 1 shall be disregarded.

Table 1

Payments disregarded in the calculation of employment income

1. Any payment in respect of qualifying removal expenses, or the provision of any qualifying removal benefit, within the meaning of Schedule 11A to the Taxes Act**(31)**.

2. Payments in respect of expenses which are wholly, exclusively and necessarily incurred in the performance of the duties of the claimant’s employment or which are qualifying travelling expenses within section 198(1A) of the Taxes Act**(32)**.

3. Travel facilities provided for the claimant as a member of the naval, military or air forces of the Crown for the purpose of going on, or returning from, leave.

4. Payment or reimbursement of expenses in connection with the provision for, or use by, the claimant as a person holding an office or employment of a car parking space at or near his place of work.

5. Any benefit or non-cash voucher provided to the claimant, or to any member of his family or household, falling within section 197G of the Taxes Act (sporting and recreational facilities)**(33)**.

6. Any payment of incidental overnight expenses falling within section 200A of the Taxes Act**(34)**.

7. So much of a gratuity payable to a member of the Armed Forces which is exempt under section 316 of the Taxes Act.

8. The value of meal vouchers issued to the claimant as an employee, if the conditions specified in Inland Revenue Extra Statutory Concession A2 are satisfied.

(31) Schedule 11A was inserted by Schedule 5 to the Finance Act 1993 (c. 34).

(32) Subsections (1) to (1B) of section 198 were substituted for subsection (1) of that section by section 61(1) of the Finance Act 1998.

(33) Section 197G was inserted by section 75 of the Finance Act 1993.

(34) Section 200A was inserted by section 93(4) of the Finance Act 1995 (c. 4).

9. Any cash payment received by the claimant as a miner in lieu of free coal, or the provision of the coal itself, in relation to which income tax is not charged under Inland Revenue Extra Statutory Concession A6.

10. An award made to the claimant as a director or employee by way of a testimonial to mark long service, if the conditions specified in Inland Revenue Extra Statutory Concession A22 are satisfied.

11. Payment of a daily subsistence allowance to which Extra Statutory Concession A84 applies.

12. An award made to the claimant under a Staff Suggestion Scheme, if the conditions specified in Inland Revenue Extra Statutory Concession A57 are satisfied.

13. Travelling and subsistence allowances paid to or on behalf of the claimant by his employer which fall within Inland Revenue Extra Statutory Concession A58 (public transport disruption).

14. Any gift consisting of goods, or a voucher or token to obtain goods, if the conditions specified in Inland Revenue Extra Statutory Concession A70 are satisfied.

15. A cash voucher, non-cash voucher or credit-token to the extent that it is used by the recipient for the provision of child care, the costs of which if borne by the recipient would be relevant child care charges within the meaning of regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(35).

(5) From the amount of employment income, calculated in accordance with the preceding provisions of this regulation, there shall be deducted the amount of any deduction permitted in calculating emoluments for the purposes of Schedule E by virtue of—

- (a) section 201 of the Taxes Act (deductions for fees and subscriptions to professional bodies and learned societies);
- (b) section 201AA of the Taxes Act (deductions in connection with employee liabilities and indemnity insurance)(36);
- (c) section 201A of the Taxes Act (entertainers' expenses)(37); or
- (d) under section 202(2) of the Taxes Act (payroll deduction scheme for payments to charity)(38).

CHAPTER 3

Pension Income

Pension Income

5.—(1) In these Regulations “pension income” means—

- (a) any annuity, pension or stipend payable by the Crown or out of the public revenue of the United Kingdom or of Northern Ireland other than annuities charged under paragraph (c) of Case III of Schedule D;
- (b) any pension paid otherwise than by or on behalf of a person outside the United Kingdom;
- (c) any payment or pension which is assessed and charged under Schedule E by virtue of section 133 of the Taxes Act (voluntary pensions);

(35) S.I. 2002/2005.

(36) Section 201AA was inserted by section 91 of the Finance Act 1995.

(37) Section 201A was inserted by section 77 of the Finance Act 1990 (c. 29), amended by section 69 of the Finance Act 1991 and partly repealed by Schedule 17 to the Deregulation and Contracting-Out Act 1994 (c. 40).

(38) Section 202 was amended by section 109 of the Finance Act 1996 (c. 8).

- (d) any annuity or pension from a retirement benefits scheme which is taxable under Schedule E by virtue of section 597(1) or (3) of the Taxes Act⁽³⁹⁾ (charge to tax on retirement benefits schemes);
 - (e) any payment to which section 600 of the Taxes Act (unauthorised payments to or for employees) applies;
 - (f) any periodical payment granted out of the House of Commons Members' Fund and charged to income tax under Schedule E by virtue of section 613(3) of the Taxes Act⁽⁴⁰⁾ (parliamentary pension funds);
 - (g) any annuity paid from a fund to which section 608 of the Taxes Act (superannuation funds approved before 6th April 1980) applies;
 - (h) any payment to which section 647 of the Taxes Act (unauthorised payments from funds held for the purposes of an approved pension scheme) applies; and
 - (i) any annuity to which section 648A of the Taxes Act (annuities from funds held for approved retirement benefits schemes)⁽⁴¹⁾ applies.
- (2) In calculating the amount of a person's pension income there shall be disregarded any payment mentioned in Column 1 of Table 2 to the extent specified in the corresponding entry in Column 2.

Table 2

Pensions and other payments disregarded in the calculation of pension income

<i>1. Payment</i>	<i>2. Extent of disregard</i>
1. A wounds pension or disability pension to which section 315 of the Taxes Act applies.	So much of the payment as is disregarded by virtue of section 315(1) of the Taxes Act ⁽⁴²⁾ .
2. An annuity or additional pension payable to a holder of the Victoria Cross, George Cross or any other decoration mentioned in section 317 of the Taxes Act.	The whole of the annuity or additional pension and, if both are payable, the whole of both such annuity and additional pension.
3. A pension or allowance to which section 318 of the Taxes Act ⁽⁴³⁾ applies.	The amount that is not to be treated as income for the purposes of the Income Tax Acts by virtue of section 318(2).
4. A pension or allowance by reason of payment of which a pension or allowance specified in section 318(2) is withheld or abated.	The amount treated as falling within section 318 by virtue of subsection (3) of that section.
5. In the case of a claimant in receipt of a pension under the Service Pensions Order, any increase in the rate of that pension in respect of a dependant who is not a member of the claimant's family.	The amount of the increase.

⁽³⁹⁾ Subsection (3) was added to section 97 by section 110 of the Finance Act 1994.

⁽⁴⁰⁾ There is an amendment to section 613 which is not relevant for present purposes.

⁽⁴¹⁾ Section 648A was inserted by section 109 of the Finance Act 1994.

⁽⁴²⁾ Section 315(5) provides that where the amount of retired pay or pension is not solely attributable to disablement or disability only so much of it as is certified by the Secretary of State to be so attributable qualifies for relief under section 315(1).

⁽⁴³⁾ Section 318 was amended by S.I. [1988/1843](#).

<i>1. Payment</i>	<i>2. Extent of disregard</i>
6. A mobility supplement, or a payment in respect of attendance, paid in conjunction with a war pension.	The amount of the supplement or payment.
7. Any supplementary pension under Article 29(1A) of the Service Pensions Order(44).	The amount of the supplementary pension.
8. A pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983(45).	The amount for the time being specified in paragraph 1(c) of Schedule 4 to the Scheme.
9. A pension awarded on retirement through disability caused by injury on duty or by a work-related illness.	The amount by which the pension exceeds what would have been payable if the retirement had been on grounds of ill-health caused other than by an injury or illness of the kind mentioned in column 1.

CHAPTER 4

Trading Income

Trading income

6. The claimant's trading income is—
- (a) the amount of his taxable profits for the tax year from—
 - (i) any trade carried on in the United Kingdom or elsewhere;
 - (ii) any profession or vocation the income from which does not fall under any other provisions of these Regulations; or
 - (b) if the claimant is a partner in the trade, profession or vocation, his taxable profit for the year arising from his share of the partnership's trading or professional income.

Here "taxable profits" has the same meaning as it has for Cases I, II and V of Schedule D but disregarding sections 95A and section 96 of the Taxes Act (averaging of fluctuating profits: rules for creative artists, farmers and market gardeners)(46).

CHAPTER 5

Social Security Income

Social security income

- 7.—(1) The claimant's social security income is the total amount payable—
- (a) under any provision of the Social Security Act 1988(47), the Contributions and Benefits Act or the Jobseekers Act 1995(48) or under section 69 of the Child Support, Pensions and Social Security Act 2000(49);

(44) Paragraph (1A) was inserted by S.I. 1994/1906. The amount of the pension mentioned in that paragraph has been increased, most recently by S.I. 2002/792.

(45) S.I. 1983/686.

(46) Section 95A was inserted by section 71(1) of the Finance Act 2001 (c. 9). Section 96 was amended by sections 196, 199, 214(1) and 216 of the Finance Act 1994, section 128(3) and (11) of the Finance Act 1996 and paragraph 1 of Schedule 7 to the Finance Act 1998.

(47) 1988 c. 7.

(48) 1995 c. 18.

- (b) under any provision of the Act;
- (c) by the Secretary of State in respect of the non-payment of a payment which ought to have been made under a provision mentioned in sub-paragraph (a); and
- (d) by way of an ex gratia payment made by the Secretary of State, or in Northern Ireland by the Department for Social Development, in connection with a benefit, pension or allowance under the Contributions and Benefits Act.

This is subject to the following provisions of this regulation.

(2) Pensions under the Contributions and Benefits Act which are pension income by virtue of regulation 5(1)(a) are not social security income.

(3) In calculating the claimant's social security income the payments in Table 3 shall be disregarded.

Table 3

**Payments under, or in connection with, the Act, the Social Security
Act 1988, the Contributions and Benefits Act or the Jobseekers
Act 1995 disregarded in calculation of social security income**

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1. An attendance allowance under section 64 of the Contributions and Benefits Act(50).
 2. A back to work bonus under section 26 of the Jobseekers Act 1995(51).
 3. A bereavement payment under section 36 of the Contributions and Benefits Act(52).
 4. Child benefit under Part 2 of the Act.
 5. A Christmas bonus under section 148 of the Contributions and Benefits Act.
 6. Council tax benefit under section 131 of the Contributions and Benefits Act(53).
 7. A disability living allowance under section 71 of the Contributions and Benefits Act.
 8. Disabled person's tax credit under section 129 of the Contributions and Benefits Act(54).
 9. Any discretionary housing payment pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001(55).
 10. An ex-gratia payment by the Secretary of State or, in Northern Ireland, the Department for Social Development, to a person over pensionable age by way of supplement to incapacity benefit.
 11. A guardian's allowance under section 77 of the Contributions and Benefits Act.
 12. Housing benefit under section 130 of the Contributions and Benefits Act.

(49) 2000 c. 19.

(50) Section 64 has been amended: the relevant amendment is that made by section 66(1) of the Welfare Reform and Pensions Act 1999 (c. 30) ("the Welfare Reform Act").

(51) 1995 c. 18.

(52) Section 36 was substituted by section 54(1) of the Welfare Reform Act.

(53) Section 131 was substituted by paragraph 4 of Schedule 9 to the Local Government Finance Act 1992 (c. 14).

(54) Section 129 was amended by paragraph 2(h) of Schedule 1 to the Tax Credits Act 1999 (c. 10) in consequence of the renaming of disability working allowance by that Act. Disabled person's tax credit is to be abolished by section 1(3)(c), and section 129 is repealed by section 56 of the Act.

(55) S.I. 2001/1167.

13. Income support under section 124 of the Contributions and Benefits Act(**56**), unless it is chargeable to tax under section 151(1) of the Taxes Act.

14. Incapacity benefit which is—

- (a) short term incapacity benefit payable at the lower rate; or
- (b) payable to a person who had received invalidity benefit before 13th April 1995 if the period of incapacity for work is treated, by virtue of regulation 2 of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(**57**) (days to be treated as days of incapacity for work) as having begun before that date.

15. Industrial injuries benefit under section 94 of the Contributions and Benefits Act.

16. A contribution-based jobseeker's allowance under the Jobseekers Act 1995, to the extent that it exceeds the maximum contained in section 151A of the Taxes Act(**58**).

17. An income-based jobseeker's allowance under the Jobseekers Act 1995.

18. A maternity allowance under section 35 of the Contributions and Benefits Act(**59**).

19. A severe disablement allowance under section 68 or 69 of the Contributions and Benefits Act(**60**).

20. A social fund payment under Part 8 of the Contributions and Benefits Act.

21. Statutory maternity pay under Part 12 of the Contributions and Benefits Act(**61**).

22. Statutory sick pay under Part 11 of the Contributions and Benefits Act.

23. Working families' tax credit under section 128 of the Contributions and Benefits Act(**62**).

24. A payment by way of compensation for the non-payment of, or in respect of loss of entitlement (whether wholly or partly) of, income support, jobseeker's allowance, housing benefit or housing benefit supplement.

25. A payment in lieu of milk tokens or the supply of vitamins under the Welfare Foods Regulations 1996(**63**).

(4) If an increase in respect of a child dependant is payable with an allowance, benefit, pension or other payment ("the main payment") listed in Table 3, the increase shall also be wholly disregarded in calculating the income of the recipient of the main payment.

(5) For the purpose of calculating the amount to be paid by way of either of the tax credits mentioned in section 1(1) of the Act, any amount payable by way of the other of those tax credits shall be disregarded.

(56) Section 124(1) was amended by paragraph 30 of Schedule 2 to the Jobseekers Act 1995 (c. 18) ("the Jobseekers Act") and paragraph 28 of Schedule 8 to the Welfare Reform Act. Subsections (2) and (3) of section 124 were repealed by Schedule 3 to the Jobseekers Act.

(57) S.I. 1995/310; relevant amending instrument S.I. 2002/491.

(58) Section 151A was inserted by paragraph 12 of Schedule 2 to the Jobseekers Act.

(59) Subsection (1) was substituted for the previous subsections (1) and (1A) by section 53(1) of the Welfare Reform Act.

(60) Sections 68 and 69 were repealed by Part 4 of Schedule 13 to the Welfare Reform Act. However, they continue to have effect in respect of beneficiaries whose period of incapacity for work began before 6th April 2001 by virtue of the saving in article 4 of S.I. 2000/2958.

(61) Statutory maternity pay and statutory sick pay, although payable under the Contributions and Benefits Act are taken into account in calculating employment income, whether paid by the employer or the Board.

(62) Section 128 was amended by paragraph 2(g) of Schedule 1 to the Tax Credits Act 1999 in consequence of the renaming of family credit by that Act. Working families' tax credit is abolished by section 1(3)(b), and section 128 is repealed by section 56, of the Act from a date to be provided for by commencement order.

(63) S.I. 1996/1434, amended by 1997/857, 1999/2561, 2000/694 and 2001/758. The functions of the Secretary of State as respects Wales under this instrument were transferred to the National Assembly by S.I. 1999/672 and, as respects Scotland, to the Scottish Ministers by S.I. 1999/750.

(6) A reference in this regulation to an enactment applying only in Great Britain includes a reference to a corresponding enactment applying in Northern Ireland.

CHAPTER 6

Student Income

Student income

8. “Student income” means any grant under regulation 15 of the Education (Student Support) Regulations 2002(64) other than—

- (a) a grant for a dependant child under paragraph (1)(c) of that regulation; or
- (b) a grant for books, travel and equipment under paragraph (8) of that regulation.

In the application of this regulation to Scotland and Northern Ireland the references to the provisions of regulation 15 of the Education (Student Support) Regulations of 2002 are to be construed as a reference to the provisions of any enactment having a corresponding effect there.

Payments of income in connection with students to be disregarded for the purposes of regulation 3

9. Income which is exempt from income tax by virtue of section 331 or 331A of the Taxes Act (which deal respectively with scholarship income and interest on the repayment of sums recovered by way of deductions in respect of student loans)(65) is disregarded in calculating a claimant’s income under regulation 3.

CHAPTER 7

Investment Income

Investment income

10.—(1) In these Regulations “investment income” means the gross amount of—

- (a) any interest of money, whether yearly or otherwise, or any annuity or other annual payment, whether such payment is payable within or out of the United Kingdom, either as a charge on any property of the person paying it by virtue of any deed or will or otherwise, or as a reservation out of it, or as a personal debt or obligation by virtue of any contract, or whether the payment is received and payable half-yearly or at any shorter or longer periods, but not including property income;
- (b) any discounts on securities;
- (c) any income from securities payable out of the public revenues of the United Kingdom or Northern Ireland;
- (d) dividends and other distributions of a company resident in the United Kingdom and any tax credit associated with that payment; and
- (e) any amount treated as forming part of the individual’s income for the year for income tax purposes by virtue of section 547(1)(a) of the Taxes Act(66).

(64) S.I. 2002/195.

(65) Section 331A was inserted by section 60 of the Finance Act 1999.

(66) Relevant amendments to section 547(1) have been made by paragraph 9 of Schedule 7 to the Finance Act 1991, section 56(1) and (4) and 76(2) and (6) of the Finance Act 1995, sections 121(8)(a), 122(7)(a) and 205 of, and Part V(6) of Schedule 41 to the Finance Act 1996, paragraphs 1 and 7 of Schedule 14, Part III(19) of Schedule 27, to the Finance Act 1998, section 22(8) (a) and (12) of the Finance Act 1999 and paragraphs 1 and 11 of Part 1 of Schedule 28 to the Finance Act 2001. Relevant

This is subject to the following qualification.

- (2) In calculating investment income, there shall be disregarded—
- (a) any amount listed in column 1 of Table 4 to the extent shown in the corresponding entry in column 2;
 - (b) any amount listed in column 1 of Table 5 during the period shown in the corresponding entry in column 2;
 - (c) any income arising from savings certificates, and interest on tax reserve certificates, exempted from tax by section 46 of the Taxes Act (savings certificates and tax reserve certificates);
 - (d) the first £70 in any tax year of interest on deposits with National Savings and Investments, exempted from income tax by section 325 of the Taxes Act (interest on deposits with National Savings and Investments).
 - (e) any payment to a claimant which does not form part of his income for the purposes of income tax by virtue of section 347A(1)(b) of the Taxes Act (general rule about annual payments otherwise subject to tax under Case III of Schedule D)(67).

Table 4

Payments disregarded in the calculation of investment income

<i>1. Description of income to be disregarded</i>	<i>2. Extent of disregard</i>
<p>1. Any interest, dividends, distributions, profits or gains in respect of investments under—</p> <ol style="list-style-type: none"> (a) a Personal Equity Plan, or (b) an Individual Savings Account, <p>in respect of which the claimant is entitled to relief from income tax under section 333 of the Taxes Act, or which is taxed only in accordance with regulation 23 of the Individual Savings Account Regulations 1998(68).</p>	<p>The whole amount, unless it is interest under a personal equity plan to which regulation 17A(2) of the Personal Equity Plan Regulations 1989(69) applies. Interest to which that paragraph applies is disregarded only to the extent that it does not exceed the annual limit of £180 mentioned in that regulation.</p>
<p>2. Any interest or bonus payable on an account which is a tax-exempt special savings account for the purposes of section 326A of the Taxes Act(70).</p>	<p>The whole amount.</p>
<p>3. Any terminal bonus, or interest or other sum, payable under a share option linked scheme which is a certified contractual savings</p>	<p>The whole amount.</p>

modifications are made by S.I. 1999/1029. That instrument was amended by S.I. 2001/2724, Articles 184 and 185 of S.I. 2001/3629 and S.I. 2002/455.

(67) Section 347A was inserted by section 36(1) of the Finance Act 1988 (c. 39).

(69) S.I. 1989/469: regulation 17A was inserted by S.I. 1991/733 and amended by S.I. 1991/2774, 1995/3287 and 1996/846.

(68) S.I. 1998/1870: there are amendments which are not relevant for the purposes of this instrument.

(70) Section 326A was inserted by section 28(1) of the Finance Act 1990 (c. 29) and amended by section 63(2) of the Finance Act 1995 (c. 4).

<i>1. Description of income to be disregarded</i>	<i>2. Extent of disregard</i>
scheme for the purposes of section 326 of the Taxes Act(71).	
4. Any winnings from betting, including pool betting, or lotteries or games with prizes.	The whole amount.
5. Any interest on a payment of £10,000 made by the Secretary of State to a person who was held prisoner by the Japanese during the Second World War or to the spouse of such a person, if the payment is held in a distinct account and no payment (other than interest) has been added to the account.	The whole amount of the interest.
6. Any interest on a payment made to the claimant by, or on behalf of a government of a country outside the United Kingdom, either from its own resources or with contributions from any other organisation, by way of compensation for a victim of National Socialism if the payment is held in a distinct account and no payment (other than interest) has been added to the account. Here a reference to a victim of National Socialism is a reference to a person who was required to work as a slave or a forced labourer for National Socialists or their sympathisers during the Second World War, or suffered property loss, or suffered injury or is the parent of a child who died, at the hands of National Socialists or their sympathisers during the Second World War.	The whole amount of the interest.
7. Any monies paid to the claimant by a bank or building society as compensation in respect of an unclaimed account held by a Holocaust victim and which vested in the Custodian of Enemy Property under section 7 of the Trading with the Enemy Act 1939(72) and treated as exempt from income tax by Extra Statutory Concession A100.	The amount treated as exempt by the Extra Statutory Concession.
8. Any interest, or payment in respect of interest, which is disregarded for income tax purposes by virtue of— (a) section 329 of the Taxes Act (interest or damages for personal injuries), or	The amount so disregarded.

(71) Section 326 was amended by section 29 of, and Schedule 14 to the Finance Act 1990 and paragraphs 3 to 6 of Schedule 12 to the Finance Act 1995.

(72) 1939 c. 89. There is an amendment to section 7 which is not relevant for present purposes.

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Statutory Instruments are not carried in their revised form on this site.*

<i>1. Description of income to be disregarded</i>	<i>2. Extent of disregard</i>
(b) section 329AA of the Taxes Act (personal injury damages in the form of periodical payments)(73).	
10. Annuity payments under an award of compensation made under the Criminal Injuries Compensation Scheme (within the meaning of section 329AB(2) of the Taxes Act(74)).	The amount of any payment which is treated as not being income of the claimant or his partner by virtue of section 329AA of the Taxes Act.
11. A payment under a life annuity.	The amount of interest eligible for relief under section 353 of the Taxes Act by virtue of section 365 of that Act.
12. Any interest, or payment in respect of interest, which is compensation to a person who is under the age of 18 years for the death of one or both of his parents.	The whole of the interest or payment.

Table 5

**Payments in connection with very severe disablement,
Creutzfeldt-Jakob disease and haemophilia**

<i>1. Description of income to be disregarded</i>	<i>2. Applicable period</i>
1. A trust payment made to— (a) a diagnosed person; (b) the diagnosed person’s partner; or (c) the person who was his partner at the date of his death.	The period beginning on the date on which the trust payment is made and ending with the death of the person to whom the payment is made.
2. A trust payment made to a parent of a deceased diagnosed person, or a person acting in the place of his parent.	The period beginning on the date on which the trust payment is made and ending two years after that date.
3. The amount of any payment out of the estate of a person to whom a trust payment has been made, which is made to the person who was the diagnosed person’s partner at the date of his death.	The period beginning on the date on which the payment is made and ending on the date on which that person dies.
4. The amount of any payment out of the estate of a person to whom a trust payment has been made, which is made to a parent of a deceased diagnosed person, or a person acting in the place of his parent.	The period beginning on the date on which the payment is made and ending two years after that date.

(3) The amounts disregarded under items 3 and 4 in Table 5 shall not exceed the total amount of any trust payments made to the person to whom the trust payment had been made.

(4) In this regulation “diagnosed person” means—

(73) Section 329AA was inserted by section 150 of and Schedule 26 to the Finance Act 1996.

(74) Section 329AB was inserted by section 150 of and Schedule 26 to the Finance Act 1996.

- (a) a person who has been diagnosed as suffering from, or who after his death has been diagnosed as having suffered from, variant Creutzfeldt-Jakob disease;
- (b) a person who is suffering or has suffered from haemophilia; or
- (c) a person in respect of whom a payment has been made from the 1992 Fund, the Eileen Trust or the Independent Living Funds; and

a reference to a person being a member of the diagnosed person's household at the date of the diagnosed person's death includes a person who would have been a member of his household but for the diagnosed person being in residential accommodation, a residential care home or a nursing home on that date.

(5) In this regulation—

“relevant trust” means—

- (a) a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;
- (b) the Macfarlane Trusts, or
- (c) the 1992 Fund, the Eileen Trust or the Independent Living Funds.

“residential accommodation”, “residential care home” and “nursing home” have the meanings given by regulation 2(1) of the Income Support (General) Regulations 1987; and

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

CHAPTER 8

Property income

Property income

11.—(1) In these Regulations “property income” means the annual taxable profits arising from a business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land in the United Kingdom.

Expressions which are used in this paragraph which are defined in section 15 of the Taxes Act(75) for the purposes of that section bear the same meaning here as they bear in that section.

This paragraph is subject to the following qualification.

- (2) In calculating property income there shall be disregarded any profits or gains—
 - (a) treated as nil by paragraph 9 of Schedule 10 to the Finance (No. 2) Act 1992(76); or
 - (b) excluded from profits or gains by paragraph 11 of that Schedule(77).

CHAPTER 9

Foreign income

12.—(1) In these Regulations “foreign income” means income arising, in the year in question, from possessions or from securities out of the United Kingdom which is not—

- (a) employment income;

(75) Section 15 was partly repealed by Part 5 of Schedule 14 to the Finance Act 1988 (c. 39), amended by paragraphs 1 and 2 of Schedule 5 to the Finance Act 1998 (c. 16).

(76) Paragraph 9 was amended, for chargeable periods ending after 5th April 2001, by paragraph 86(1) and (2) of Schedule 2 to the Capital Allowances Act 2001 (c. 2).

(77) Paragraph 11 was amended, for chargeable periods ending after 5th April 2001, by paragraph 86(3) of Schedule 2 to the Capital Allowances Act 2001.

- (b) trading income; or
- (c) investment income falling within regulation 10(1)(e).

This is subject to the following provisions of this regulation.

(2) The reference in paragraph (1) to income arising from or possessions or from securities out of the United Kingdom shall be construed in accordance with section 18(3B) of the Taxes Act(78).

(3) In calculating the claimant's foreign income there shall be disregarded—

- (a) any payment by way of an annuity or pension payable under any special provision for victims of National Socialist persecution which is made by the law of the Federal Republic of Germany, or any part of it, or of Austria;
- (b) if the claimant's foreign income comprises or includes a pension to which section 65(2) or section 196 of the Taxes Act applies, the amount authorised to be deducted by that section; and
- (c) any amount which would be disregarded for the purposes of income tax by virtue of—
 - (i) Extra Statutory Concession A10 (lumps sums paid by overseas pension schemes);
 - (ii) Extra Statutory Concession A24 (foreign social security payments);
 - (iii) Extra Statutory Concession A30 (interest on damages for personal injuries awarded by a foreign court); or
 - (iv) Extra Statutory Concession A44 (education allowances payable to public officials of overseas territories).

CHAPTER 10

Notional Income

Introduction

13. In these Regulations “notional income” means income which, by virtue of regulations 14 to 17 a claimant is treated as having, but which he does not in fact have.

Claimants treated for any purpose as having income by virtue of the Income Tax Acts

14.—(1) If an amount is treated for any purpose as the claimant's income under any provision mentioned in paragraph (2), he is to be treated as having that amount of income.

(2) The provisions mentioned in paragraph (1) are—

- (a) the following provisions of the Taxes Act—
 - (i) section 34 (treatment of premiums etc. as rent)(79);
 - (ii) section 56 (transactions in deposits with and without certificates or in debts)(80) or 56A (disposal or exercise of rights in pursuance of deposits)(81);
 - (iii) section 249 (stock dividends treated as income)(82);

(78) Subsections (3B) to (3E) were inserted by paragraph 4(3) of Schedule 7 to the Finance Act 1996.

(79) Section 34 was amended by Part 8(1) of Schedule 29 to the Finance Act 1995 (c. 4) and section 40 of, and paragraph 15 of Schedule 5 to, the Finance Act 1998 (c. 36).

(80) Section 56 was amended by paragraph 14(3) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 2 of Schedule 18 to the Finance Act 1993 (c. 34) and section 164(4) of, and paragraph 6 of Schedule 14 to, the Finance Act 1996 (c. 8).

(81) Section 56A was inserted by paragraph 1 of Schedule 8 to the Finance (No. 2) Act 1992 (c. 48).

(82) Section 249 was amended by Part 5 of Schedule 17 to the Finance Act 1989 (c. 26), section 19(4) of the Finance (No. 2) Act 1992, section 77(3) of the Finance Act 1993, paragraph 6 of Schedule 6 to the Finance Act 1996 and paragraph 10 of Schedule 4 to the Finance (No. 2) Act 1997 (c. 58).

- (iv) section 421 (taxation of borrower when loan to participators in a close company released etc.)(83);
 - (v) section 660A (income arising under settlement where settlor retains an interest)(84);
 - (vi) section 660B (payments to unmarried minor children of settlor)(85);
 - (vii) section 677 (sums paid to settlor otherwise than as income)(86) or 678 (capital sums paid by body connected with settlement)(87);
 - (viii) section 695 (limited interests in residue of estate in administration)(88) or 696 (absolute interests in residue of estate in administration)(89);
 - (ix) section 714 (transfers of securities: treatment of deemed sums and reliefs)(90) or 716 (transfer of unrealised interest);
 - (x) section 730 (transfer of income arising from securities)(91);
 - (xi) section 730A (treatment of price differential on sale and repurchase of securities)(92);
 - (xii) section 739 (prevention of avoidance of income tax)(93);
 - (xiii) section 740 (liability of non-transferors)(94);
 - (xiv) section 761 (charge to income tax of offshore income gain)(95); and
 - (xv) section 776 (transactions in land: taxation of chargeable gains)(96); and
- (b) paragraph 1 of Schedule 13 to the Finance Act 1996 (discounted securities: charge to tax on realised profit comprised on a discount).

Claimants depriving themselves of income in order to secure entitlement

15. If a claimant has deprived himself of income for the purpose of securing entitlement to, or increasing the amount of, a tax credit, he is treated as having that income.

Claimants to whom income becomes available upon the making of a claim

16.—(1) If income would become available to a claimant upon the making of an application for that income he is treated as having that income.

This is subject to the following qualification.

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- (83) Section 421 was amended by section 19(6) of the Finance (No. 2) Act 1992, section 77(4) of the Finance Act 1993, section 122(6) of, and paragraph 9 of Schedule 6 to, the Finance Act 1996 and paragraph 11 of Schedule 4 to the Finance (No. 2) Act 1997.
- (84) Section 660A was inserted, together with sections 660B to 660G, by paragraph 1 of Schedule 17 to the Finance Act 1995 and amended by section 41(6) of, and paragraph 26 of Schedule 13 and Part 2(4) of Schedule 40 to, the Finance Act 2000 (c. 17).
- (85) Section 660B was amended by section 64(1) to (4) of the Finance Act 1999 (c. 16).
- (86) Section 677 was amended by section 109(4) of the Finance Act 1989, paragraph 7 of Schedule 6 to the Finance Act 1993 and paragraph 9 of Schedule 17 to the Finance Act 1995.
- (87) Section 678 was amended by paragraph 10 of Schedule 17 to the Finance Act 1995.
- (88) Section 695 was amended by paragraph 11(1) of Schedule 6 to the Finance Act 1993 and paragraph 2 of Schedule 18, and Part 8(10) of Schedule 29, to the Finance Act 1995.
- (89) Section 696 was amended by paragraph 11(1) of Schedule 6 to the Finance Act 1993 and paragraph 3 of Schedule 18 to the Finance Act 1995.
- (90) Section 714 was amended by Part 5(3) of Schedule 41 to the Finance Act 1996.
- (91) Section 730 was amended by paragraph 23 of Schedule 7 to the Finance Act 1996.
- (92) Section 730A was inserted by section 80(1) of the Finance Act 1995 and amended by paragraph 37 of Schedule 14 to the Finance Act 1996.
- (93) Section 739 was amended by section 81 of the Finance Act 1997 (c. 16).
- (94) Section 740 was amended by paragraph 6 of Schedule 26 to the Finance Act 2000.
- (95) Section 761 was amended by paragraph 11 of Schedule 14 to the Finance Act 1990 (c. 29) and paragraph 14(47) of Schedule 10, and Schedule 12, to the Taxation of Chargeable Gains Act 1992.
- (96) Section 776 was amended by paragraph 14(50) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 and section 46(3) of, and paragraph 1 of Schedule 7 to, the Finance Act 1998.

- (2) Paragraph (1) does not apply in relation to income—
- (a) under a trust derived from a payment made in consequence of a personal injury;
 - (b) under a personal pension scheme or retirement annuity contract;
 - (c) consisting in a sum to which item 8 of Table 4 in regulation 10 refers (compensation for personal injuries which is administered by the Court); or
 - (d) consisting in a rehabilitation allowance made under section 2 of the Employment Act.

Claimants providing services to other persons for less than full earnings

- 17.**—(1) If a claimant provides a service for another person and—
- (a) the other person makes no payment of earnings or pays less than those paid for a comparable employment (including self-employment) in the area; and
 - (b) the Board are satisfied that the means of the other person are sufficient for him to pay for, or to pay more for, the service,

the claimant is to be treated as having such an amount of employment income, or in the case of a service provided in the course of a trade or business, such an amount of trading income as is reasonable for the employment of the claimant to provide the service.

This is subject to the following qualification.

- (2) Paragraph (1) does not apply where—
- (a) the claimant is a volunteer or is engaged to provide the service by a charitable or voluntary organisation and the Board are satisfied that it is reasonable for the claimant to provide the service free of charge; or
 - (b) the service is provided in connection with the claimant’s participation in an employment or training programme—
 - (i) in Great Britain in accordance with regulation 19(1)(q) of the Jobseeker’s Allowance Regulations 1996 other than where it is provided in connection with the claimant’s participation in the Intensive Activity period specified in regulation 75(1)(a)(iv) of those Regulations; or
 - (ii) in Northern Ireland in accordance with regulation 19(1)(p) of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996⁽⁹⁷⁾ other than where it is provided in connection with the claimant’s participation in the Preparation for Employment Programme specified in regulation 75(1)(a)(v) of those Regulations⁽⁹⁸⁾.

CHAPTER 11

Miscellaneous income

Miscellaneous income

18. In these Regulations “miscellaneous income” means income which does not fall within any other provision of these Regulations and which is subject to income tax under Case VI of Schedule D.

⁽⁹⁷⁾ S.R. 1996 No. 198.

⁽⁹⁸⁾ Regulation 75 was substituted by regulation 8 of S.R. 1997 No. 541 and paragraph (1)(a)(v) inserted by regulation 5(a) of S.R. 2001 No. 151.

PART 3

Sums disregarded in the calculation of income

General disregards in the calculation of income

- 19.**—(1) For the purposes of regulation 3—
- (a) the sums specified in Table 6 are disregarded in the calculation of income;
 - (b) the sums specified in column 1 of Table 7 are disregarded in the calculation of income if the condition in the corresponding entry in column 2 of that Table is satisfied; and
 - (c) the sums specified in column 1 of Table 8 are disregarded in the calculation of income to the extent specified in the corresponding entry in column 2 of that Table.
- (2) In this regulation—
- “the JSA Regulations” means the Jobseeker’s Allowance Regulations 1996; and
- “the JSA (NI) Regulations” means the Jobseeker’s Allowance (Northern Ireland) Regulations 1996.

Table 6

Sums disregarded in the calculation of income

1. Any payment of an employment credit under a scheme under section 2(2) of the Employment Act known as “New Deal 50 plus” or the corresponding scheme under section 1 of the Employment and Training Act (Northern Ireland) 1950.

2. Any payment made—

- (a) under section 15 of the Disabled Persons (Employment Act) 1944⁽⁹⁹⁾ or section 15 of the Disabled Persons (Employment) Act (Northern Ireland) 1945⁽¹⁰⁰⁾; or
- (b) in accordance with arrangements made under section 2 of the Employment Act or section 1 of the Employment and Training Act (Northern Ireland) 1950⁽¹⁰¹⁾

to assist disabled persons to obtain or retain employment despite their disability.

3. Any mandatory top-up payment made pursuant to—

- (a) section 2 of the Employment Act in respect of the claimant’s participation in—
 - (i) an employment programme specified in regulation 75(1)(a)(ii)(bb) of the JSA Regulations or regulation 75(1)(a)(ii) of the JSA (NI) Regulations (Voluntary Sector Option of the New Deal);
 - (ii) an employment programme specified in regulation 75(1)(a)(ii)(cc) of the JSA Regulations (Environmental Task Force Option of the New Deal) or regulation 75(1)(a)(iii) of the JSA (NI) Regulations; or
 - (iii) the Intensive Activity Period of the New Deal Pilots for 25 plus specified in regulation 75(1)(a)(iv) of the JSA Regulations or, in Northern Ireland, the Preparation for Employment Programme specified in regulation 75(1)(a)(v) of the JSA (NI) Regulations⁽¹⁰²⁾; or
- (b) a written arrangement entered into between—

⁽⁹⁹⁾ 1944 c. 10. Section 15 was amended by section 61 of the Disability Discrimination Act 1995 (c. 50).

⁽¹⁰⁰⁾ 1945 c. 6 (N.I.).

⁽¹⁰¹⁾ 1950 c. 29 (N.I.).

⁽¹⁰²⁾ Paragraph (1)(a)(v) was inserted by regulation 5(a) of S.R. 2001 No. 151.

- (i) the Secretary of State and the person who has arranged for the claimant's participation in the Intensive Activity Period of the New Deal for 25 plus and which is made in respect of his participation in that Period; or
- (ii) the Department for Employment and Learning and the person who has arranged for the claimant's participation in the Preparation for Employment Programme and which is made in respect of the claimant's participation in the Programme.

4. Any discretionary payment pursuant to section 2 of the Employment Act, or, in Northern Ireland, section 1(1) of the Employment and Training Act (Northern Ireland) 1950 to meet, or help to meet, special needs in respect of the claimant's participation in the Full-Time Education and Training Option of the New Deal as specified in regulation 75(1)(b)(ii) of the JSA Regulations or of the JSA (NI) Regulations.

5. Any—

- (a) education maintenance allowance in accordance with regulations made under section 518 of the Education Act 1996(**103**) (payment of school expenses; grant of scholarships etc.); or
- (b) payment (not within sub-paragraph (a)) in respect of a course of study attended by a child or qualifying young person payable—
 - (i) in accordance with regulations made under section 518 of the Education (Scotland) Act 1980(**104**) (power to assist persons to take advantage of educational facilities) or section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992(**105**) (provision of financial assistance to students); or
 - (ii) by virtue of regulations made Article 50, 51 or 55(1) of the Education and Libraries (Northern Ireland) Order 1986 (provisions to assist persons to take advantage of educational facilities)(**106**).

6. Any payment made by an employment zone contractor payable in respect of the claimant's participation in the employment zone programme by way of—

- (a) a training premium;
- (b) a discretionary payment, being a fee, grant, loan or otherwise; or
- (c) any arrears of subsistence allowance paid as a lump sum.

7. Any payment made in accordance with—

- (a) a course of training or instruction funded by or on behalf of the Secretary of State for Work and Pensions, the National Assembly for Wales, the Scottish Enterprise or the Highlands and Islands Enterprise or the Department for Social Development; or
- (b) an employment zone programme,

by way of monies accumulated in order to assist in the pursuit of self-employed earner's employment which are paid after the claimant has ceased to participate in the course or programme.

8. An amount of income equal to any qualifying maintenance payment within section 347B of the Taxes Act(**107**).

(**103**) 1996 c. 56. Section 518 was substituted by section 129 of the Schools Standards and Framework Act 1998 (c. 31).

(**104**) 1980 c. 44.

(**105**) 1992 c. 37.

(**106**) S.I. 1986/594 (N.I. 3). Article 55(1) was amended by Schedule 5 to the Education and Libraries (Northern Ireland) Order 1993 (S.I. 1993/2810 (N.I. 12)).

(**107**) 1988 c. 1. Section 347B was inserted by section 36 of the Finance Act 1988 (c. 39) and amended (for the tax year beginning on 6th April 1990 and subsequent tax years) by paragraph 13 of Schedule 3, further amended by Part 8 of Schedule 14 to the Finance Act 1988, section 5 of and paragraph 6 of Schedule 4 to the Contracts (Applicable Law) Act 1990 (c. 36), sections 61 and 62 of the Finance (No. 2) Act 1992 (c. 48), section 79 to and Schedule 26 Part 5(1) to the Finance Act 1994 (c. 9), paragraphs 11 and 15 of Schedule 2 to the Jobseekers Act 1995 (c. 18), section 27 to and Schedule 27 Part 3(1) of the Finance Act 1998 (c. 36) and sections 36 and 139 of and Schedule 20 Part 3(6) to the Finance Act 1999 (c. 16).

9. Any payment in respect of a child made—

- (a) by a local authority under section 23(2)(a) of the Children Act 1989 or section 21 of the Social Work (Scotland) Act 1968**(108)**;
- (b) by a voluntary organisation under section 59(1)(a) of the Children Act 1989;
- (c) by a care authority under regulation 9 of the Boarding Out and Fostering of Children (Scotland) Regulation 1985**(109)** (provision of accommodation and maintenance for children by local authorities and voluntary organisations); or
- (d) by an authority (within the meaning of the Children (Northern Ireland) Order 1995**(110)**) to a person caring for a child by virtue of arrangements made under Article 27(2)(a) of that Order (provision of accommodation and maintenance by an authority for children whom it is looking after) or by a voluntary organisation under Article 75(1)(a) of that Order (provision of accommodation by voluntary organisations);

except to the extent that it is taxable as the profits of a trade, profession or vocation.

10. Any payment of maintenance, whether under a court order or not, which is made or due to be made by—

- (a) the claimant's former partner, or the claimant's partner's former partner; or
- (b) the parent of a child or qualifying young person where that child or qualifying young person is a member of the claimant's household except where that parent is the claimant or the claimant's partner.

11. Any payment in respect of a child or qualifying young person who is a member of the claimant's household made—

- (a) in accordance with regulations made under section 57A of the Adoption Act 1976**(111)**, section 51 of the Adoption (Scotland) Act 1978**(112)** or Article 59A of the Adoption (Northern Ireland) Order 1987**(113)** (schemes for payments of allowances to adopters);
- (b) by a local authority in pursuance of paragraph 15(1) of Schedule 1 to the Children Act 1989**(114)** (local authority contribution to child's maintenance);
- (c) by an authority, as defined in Article 2 of the Children (Northern Ireland) Order 1995**(115)**, in pursuance of Article 15 of, and paragraph 17 of Schedule 1 to, that Order (contribution by an authority to child's maintenance).

12. Any payment in respect of travelling expenses—

- (a) in relation to England and Wales, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988**(116)**;
- (b) in relation to Scotland, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988**(117)**;
- (c) in relation to Northern Ireland under regulation 3, 5 or 8 of the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 1989**(118)**; or

(108) 1968 c. 49.

(109) S.I. 1985/1799.

(110) S.I. 1995/755 (N.I. 2).

(111) 1976 c. 36. Section 57A was inserted by paragraph 25 of Schedule 10 to the Children Act 1989 (c. 41).

(112) 1978 c. 28.

(113) S.I. 1987/2203 (N.I. 22). Article 59A was inserted by paragraph 164 of Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/555 (N.I. 2)).

(114) 1989 c. 41.

(115) S.I. 1995/755 (N.I. 2).

(116) S.I. 1988/551.

(117) S.I. 1988/546.

(118) S.R. 1989 No. 348, modified by S.R. 1990 No. 164.

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- (d) made by the Secretary of State for Health, the Scottish Ministers, the Secretary of State for Wales, or the Department of Health, Personal Social Services and Public Safety and which is analogous to a payment specified in paragraph (a), (b) or (c).

13. Any payment made by the Secretary of State or the Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody.

14. Any payment under the Community Care (Direct Payments Act) 1996(119), section 12B of the Social Work (Scotland) Act 1968(120) or Article 15A of the Health and Personal Social Services (Direct Payments) (Northern Ireland) Order 1996(121).

15. Any payment of a voucher provided under section 95 or 98 of the Immigration and Asylum Act 1999(122) for any former asylum-seeker or his dependants.

16. Any payment of a provident benefit by a trade union.

Here—

“provident benefit” has the meaning given in section 467(2) of the Taxes Act; and
“trade union” has the meaning given in section 467(4) of the Taxes Act.

Table 7

Sums disregarded in calculating income if conditions are satisfied

<i>1. Description of payment</i>	<i>2. Condition that must be satisfied</i>
1. Any payment in respect of any expenses incurred by a claimant who is engaged by a charitable or voluntary organisation or is a volunteer.	The claimant does not receive remuneration or profit from the engagement and is not treated as possessing any employment income under regulation 17 in respect of that engagement.
2. A payment by way of—	The claimant—
(a) travelling expenses reimbursed to the claimant;	(a) participates in arrangements for training made under—
(b) a living away from home allowance under section 2(2)(d) of the Employment Act(123), section 2(4) of the Enterprise and New Towns (Scotland) Act 1990(124) or section 1 of the Employment and Training Act (Northern Ireland) 1950(125);	(i) section 2 of the Employment Act; (ii) section 2 of the Enterprise and New Towns (Scotland) Act 1990; or (iii) section 1 of the Employment and Training Act (Northern Ireland) 1950; or
(c) training grant; or	(b) attends a course at an employment rehabilitation centre established under section 2 of the Employment Act.
(d) child care expenses reimbursed to the claimant in respect of his participation in—	

(119) 1996 c. 30.

(120) 1968 c. 49.

(121) S.I. 1972/1265 (N.I. 14). Article 15A was inserted by Article 3 of the Personal Social Services (Direct Payments) (Northern Ireland) Order (S.I. 1996/1923 (N.I. 19)).

(122) 1999 c. 33.

(123) Section 2 was substituted by section 25 of the Employment Act 1988 (c. 19) and amended by section 29(4) of and Schedule 7 Part 1 to the Employment Act 1989 (c. 38) and section 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(124) 1990 c. 35.

(125) 1950 c. 29.

<i>1. Description of payment</i>	<i>2. Condition that must be satisfied</i>
<ul style="list-style-type: none"> (i) a New Deal option, (ii) the Intensive Activity Period of the New Deal Pilots for 25 plus, or (iii) the Preparation for Employment Programme. 	

Table 8

Sums partly disregarded in the calculation of income

<i>Type of payment to be disregarded</i>	<i>Limit on, or exception to, the extent of disregard</i>
<p>1. Any discretionary payment made pursuant to section 2 of the Employment Act, or, in Northern Ireland section 1(1) of the Employment and Training Act (Northern Ireland) 1950 to meet, or help meet, the claimant's special needs in undertaking a qualifying course within the meaning of regulation 17A(7) of the JSA Regulations(126) or regulation 17A(7) of the JSA (NI) Regulations.</p>	<p>A payment is not within this item to the extent that it relates to travel expenses incurred as a result of the claimant's attendance on the course if an amount in respect of those expenses has already been disregarded pursuant to regulation 8.</p>
<p>2. Any payment made in respect of a career development loan paid pursuant to section 2 of the Employment Act.</p>	<p>A payment is not within this item to the extent that the loan has been applied for or paid in respect of living expenses for the period of education and training supported by the loan.</p>
<p>3. Any payment made to the claimant or his partner in respect of a person who is not normally a member of the claimant's household but is temporarily in his care, by—</p> <ul style="list-style-type: none"> (a) a health authority; (b) a local authority; (c) a voluntary organisation; (d) that person pursuant to section 26(3A) of the National Assistance Act 1948(127); (e) a primary care trust established under section 16A of the National Health Service Act 1977(128). 	<p>A payment is only to be disregarded by virtue of this item if any profits or gains arising from the payment mentioned in column 1 are treated as nil by paragraph 9 of Schedule 10 to the Finance (No. 2) Act 1992.</p>
<p>4. Any payment made in Northern Ireland to the claimant or his partner in respect of a person who is not normally a member of the claimant's household but is temporarily in his care—</p> <ul style="list-style-type: none"> (a) pursuant to Article 36(7) of the Health and Personal Social Services (Northern 	<p>A payment is only to be disregarded by virtue of this item if any profits or gains arising from the payment mentioned in column 1 are treated as nil by paragraph 9 of Schedule 10 to the Finance (No. 2) Act 1992.</p>

(126) Regulation 17A(7) was amended by regulation 2(4) of S.I. 1998/2874 and regulation 2 of S.I. 1999/3083.

(127) 1948 c. 29. Section 26(3A) was inserted by section 42(4) of the National Health Service and Community Care Act 1990 (c. 19).

(128) 1977 c. 49. Section 16A was inserted by section 2 of the Health Act 1999 (c. 8).

<i>Type of payment to be disregarded</i>	<i>Limit on, or exception to, the extent of disregard</i>
<p>Ireland) Order 1972(129) by an authority; a voluntary organisation; or the person concerned, or</p> <p>(b) by a training school within the meaning of section 137 of the Children and Young Persons Act (Northern Ireland) 1968(130).</p> <p>In this item “an authority” has the meaning given by Article 2 of the Children (Northern Ireland) Order 1995.</p> <p>5. Any payment under an insurance policy taken out to insure against the risk of being unable to maintain the repayments—</p> <p>(a) on a loan which is secured on the dwelling house which the claimant occupies as his home; or</p> <p>(b) under a regulated agreement or under a hire-purchase agreement or a conditional sale agreement.</p> <p>For the purposes of paragraph (b)—</p> <p>“regulated agreement” has the meaning given in the Consumer Credit Act 1974(131); and</p> <p>“hire-purchase agreement” and “conditional sale agreement” have the meanings given in Part 3 of the Hire-Purchase Act 1964(132).</p> <p>5. Any payment in respect of the claimant’s attendance at court as a juror or witness.</p> <p>6. Any payment of a sports award except to the extent that it has been made in respect of living expenses.</p>	<p>A payment is only to be disregarded by virtue of this item to the extent that it is used to—</p> <p>(a) maintain the repayments referred to in column (1); and</p> <p>(b) meet any amount due by way of premiums on—</p> <p>(i) that policy; or</p> <p>(ii) in a case to which paragraph (a) of this item applies, an insurance policy taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as his home and which is required as a condition of the loan referred to in column (1).</p> <p>This item applies only to the extent that the payment is not compensation for loss of earnings or for the loss of payment of social security income.</p> <p>For the purposes of this item “living expenses” does not include—</p> <p>(a) the cost of vitamins, minerals or other special dietary supplements intended to enhance the performance of the claimant in the sport in respect of which the award was made; or</p> <p>(b) accommodation costs incurred as a consequence of living away from home whilst training for, or competing in, the sport in respect of which the award was made.</p>

(129) S.I. 1972/1265 (N.I. 14). Article 36 was substituted by Article 25 of S.I. 1991/194 (N.I. 1) and amended by paragraph 2(4) and (5) of Schedule 1 to S.I. 1992/3204 (N.I. 20).

(130) 1968 c. 34 (N.I.). Section 137 was amended by Schedule 18 to the Health and Personal Social Services (Northern Ireland) Order 1972 and Article 185(1) of, and paragraph 42 of Schedule 9 to, the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).

(131) 1974 c. 39.

(132) 1964 c. 53.

30th July 2002

Jim Fitzpatrick
John Heppell
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations define what is income for the purposes of working tax credit and child tax credit under the Tax Credits Act 2002 (c. 21).

Regulation 1 provides for the commencement and citation of these Regulations, and regulation 2 for the interpretation of certain terms used in them.

Regulation 3 sets out the steps to be taken to calculate the income of a claimant, or in the case of a joint claim, of the claimants for an award of either of the tax credits payable under Part 1 of the Tax Credits Act 2002 (c. 21).

Regulations 4 to 12 set out the extent to which a claimant's employment income, pension income, trading income, social security income, student income, investment income, property income and foreign income are to be taken into account for the purposes of regulation 3.

Regulations 13 to 17 contain a series of provisions which treat a claimant as having income which he does not have.

Regulation 14 provides that if a person is treated as having income for income tax purposes under specified provisions of the Income and Corporation Taxes Act 1988 (c. 1) or under paragraph 1 of Schedule 13 to the Finance Act 1996 (c. 8).

Regulation 15 provides that a claimant depriving himself of income in order to secure entitlement to or increasing the amount of a tax credit is to be treated as having it.

Regulation 16 provides that a claimant to whom income would become available upon the making of an application for it is to be treated as having that income. It does not apply if the income in question arises under a trust derived from a payment made in consequence of a personal injury, a personal pension scheme or retirement annuity contract, comprises compensation for personal injury which is being administered by a court, or a rehabilitation allowance under section 2 of the Employment and Training Act 1973 (c. 50).

Regulation 17(1) treats a claimant who provides a service for another, either without payment or at less than the rate which would be reasonable for comparable employment in the area in question, where the other has the means to pay or to pay more for the service, as having such amount of employment or trading income as would be reasonable for the employment of the claimant to provide the service. The paragraph does not apply where the recipient of the service is a charity or voluntary organisation. Nor does it apply if the service is provided in connection with participation in an employment or training programme in Great Britain under regulation 19(1)(q) of the Jobseekers Allowance Regulations 1996 (S.I.1996/207) unless it is provided in connection with the Intensive Activity period specified in regulation 75(1)(a)(iv) of those Regulations, or in corresponding circumstances in Northern Ireland.

Regulation 18 provides that income which is not otherwise dealt with in the Regulations, but which is chargeable to income tax under Case VI of Schedule D for the purposes of income tax, is to be taken into account in calculating the claimant's income under regulation 3.

Regulation 19 provides a series of miscellaneous disregards in the calculation of income under regulation 3.

A regulatory impact assessment in respect of the Tax Credits Act 2002 has been prepared and placed in the Library of each House of Parliament. A copy may be found on the Inland Revenue website (www.inlandrevenue.gov.uk).

