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STATUTORY INSTRUMENTS

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**2006 No. 213**

**The Housing Benefit Regulations 2006**

**PART 6**

**Income and capital**

*SECTION 6*

*Capital*

**Capital limit**

**43.** For the purposes of section 134(1) of the Act as it applies to housing benefit (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.

**Calculation of capital**

**44.—(1)** For the purposes of Part 7 of the Act (income-related benefits) as it applies to housing benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 46 (income treated as capital).

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1), any capital, where applicable, specified in Schedule 6.

**Disregard of capital of child and young person**

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

**Income treated as capital**

**46.—(1)** Any bounty derived from employment to which paragraph 8 of Schedule 4 applies and paid at intervals of at least one year shall be treated as capital.

(2) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 35(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4, 8, 14 or 25 to 28 of Schedule 6, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

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

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

(7) There shall be treated as capital the gross receipts of any commercial activity carried on by a person in respect of which assistance is received under the self-employment route, but only in so far as those receipts were payable into a special account (as defined for the purposes of Chapter 4A of Part 8 of the Jobseeker's Allowance Regulations) during the period in which that person was receiving such assistance.

(8) Any arrears of subsistence allowance which are paid to a claimant as a lump sum shall be treated as capital.

(9) Any arrears of working tax credit or child tax credit shall be treated as capital.

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

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

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

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

48. 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 encumbrances secured on it.

### **Notional capital**

49.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit except to the extent that that capital is reduced in accordance with regulation 50 (diminishing notional capital rule).

- (2) Except in the case of—
  - (a) a discretionary trust; or
  - (b) a trust derived from a payment made in consequence of a personal injury; or

- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 6; or
- (d) a personal pension scheme or retirement annuity contract; or
- (e) any sum to which paragraph 45(a) and 46(a) of Schedule 6 (disregard of compensation for personal injuries which is administered by the Court) refers; or
- (f) child tax credit; or
- (g) working tax credit,

any capital which would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by him but only from the date on which it could be expected to be acquired were an application made.

- (3) Any payment of capital, other than a payment of capital specified in paragraph (4), made—
  - (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension or is a pension or other periodical payment made under a personal pension scheme, be treated as possessed by that single claimant or, as the case may be, by that member;
  - (b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single claimant or by that member to the extent that it is used for the food, household fuel or, subject to paragraph (8), rent or ordinary clothing or footwear, of that single claimant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that claimant or member is liable;
  - (c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.
- (4) Paragraph (3) shall not apply in respect of a payment of capital made—
  - (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust, the Independent Living Funds, the Skipton Fund or the London Bombings Relief Charitable Fund;
  - (b) pursuant to section 2 of the 1973 Act in respect of a person's participation—
    - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations;
    - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
    - (iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or in the Intensive Activity Period for 50 plus; or
    - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations;
  - (c) under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where—
    - (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in 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(1);

- (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.

(5) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 44 (calculation of capital) be disregarded; and
- (b) he shall, subject to paragraph (6), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Section shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(6) For so long as the claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (5) shall be disregarded.

(7) Where a claimant is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of this Section shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

(8) In paragraph (3) “rent” means eligible rent less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).

### **Diminishing notional capital rule**

**50.**—(1) Where a claimant is treated as possessing capital under regulation 49(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 (3);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
  - (i) that week is a week subsequent to the relevant week; and
  - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied, shall be reduced by the amount determined under paragraph (4).

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

- (a) he is in receipt of housing benefit; and
- (b) but for regulation 49(1), he would have received an additional amount of housing benefit in that week.

(3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to the aggregate of—

- (a) the additional amount to which sub-paragraph (2)(b) refers;
- (b) where the claimant has also claimed council tax benefit, the amount of any council tax benefit or any additional amount of council tax benefit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 39(1) of the Council Tax Benefit Regulations 2006 (notional capital);

- (c) where the claimant has also claimed income support, the amount of income support to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 51(1) of the Income Support Regulations(2) (notional capital); and
  - (d) where the claimant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations (notional capital).
- (4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to housing benefit in the relevant week but for regulation 49(1), and in such a case the amount of the reduction shall be equal to the aggregate of—
- (a) the amount of housing benefit to which the claimant would have been entitled in the relevant week but for regulation 49(1) and, for the purposes of this sub-paragraph, if the relevant week is a week to which regulation 80(4)(a) refers (calculation of weekly amounts), that amount shall be determined by dividing the amount of housing benefit to which he would have been so entitled by the number of days in that week for which he was liable to make payments in respect of the dwelling he occupies as his home and multiplying the quotient so obtained by 7;
  - (b) if the claimant would, but for regulation 39(1) of the Council Tax Benefit Regulations 2006, have been entitled to council tax benefit or to an additional amount of council tax benefit in respect of the benefit week which includes the last day of the relevant week, the amount which is equal to—
    - (i) in a case where no council tax benefit is payable, the amount to which he would have been entitled; or
    - (ii) in any other case, the amount equal to the additional amount of council tax benefit to which he would have been entitled;and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the council tax benefit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
  - (c) if the claimant would, but for regulation 51(1) of the Income Support Regulations, have been entitled to income support in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income support to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
  - (d) if the claimant would, but for regulation 113 of the Jobseeker's Allowance Regulations, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(3) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income-based jobseeker's allowance to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.

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(2) [S.I. 1987/1967](#); the relevant amending Instrument is [S.I. 1990/1776](#).

(5) The amount determined under paragraph (4) shall be re-determined under that paragraph if the claimant makes a further claim for housing benefit and the conditions in paragraph (6) are satisfied, and in such a case—

- (a) sub-paragraphs (a) to (d) of paragraph (4) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to paragraph (7), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.

(6) The conditions are that—

- (a) a further claim is made 26 or more weeks after—
  - (i) the date on which the claimant made a claim for housing benefit in respect of which he was first treated as possessing the capital in question under regulation 49(1);
  - (ii) in a case where there has been at least one redetermination in accordance with paragraph (5), the date on which he last made a claim for housing benefit which resulted in the weekly amount being re-determined; or
  - (iii) the date on which he last ceased to be entitled to housing benefit, whichever last occurred; and
- (b) the claimant would have been entitled to housing benefit but for regulation 49(1).

(7) The amount as re-determined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the redetermination and in such a case the higher amount shall continue to have effect.

(8) For the purposes of this regulation—

- (a) “part-week” in paragraph (4)(b) means a period of less than a week for which council tax benefit is allowed;
- (b) “part-week” in paragraph (4)(c) and (d) means—
  - (i) a period of less than a week which is the whole period for which income support, or, as the case may be, an income-based jobseeker’s allowance, is payable; and
  - (ii) any other period of less than a week for which it is payable;
- (c) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 49(1)—
  - (i) was first taken into account for the purpose of determining his entitlement to housing benefit; or
  - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to housing benefit on that subsequent occasion and that determination or redetermination resulted in his beginning to receive, or ceasing to receive, housing benefit;

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;

- (d) “relevant subsequent week” means the benefit week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

### **Capital jointly held**

**51.** Except where a claimant possesses capital which is disregarded under regulation 49(5) (notional capital) where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole

beneficial interest therein in an equal share and the foregoing provisions of this Section 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.

### **Calculation of tariff income from capital**

**52.**—(1) Except where the circumstances prescribed in paragraph (2) or (4) apply to the claimant, where the claimant’s capital calculated in accordance with this Part exceeds £3,000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £3,000 but not exceeding £16,000.

(2) Where the claimant—

- (a) is aged 60 or over or has a partner who is aged 60 or over;
- (b) is not a person to whom the circumstances prescribed in paragraph (4) apply; and
- (c) has capital which, calculated in accordance with this Part, exceeds £6,000,

that capital shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £6,000 but not exceeding £16,000.

(3) Where the circumstances prescribed in paragraph (4) apply to a claimant and that claimant’s capital calculated in accordance with this Part exceeds £10,000, it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £10,000 but not exceeding £16,000.

(4) For the purposes of paragraph (3), the prescribed circumstances are that the claimant—

- (a) occupies residential accommodation as his home; or
- (b) is a person—
  - (i) to whom on 3rd October 2005 paragraph (2) of regulation 7 of the former regulations<sup>(3)</sup> as in force on that date applied; or
  - (ii) to whom on 3rd October 2005, paragraph (5) or paragraph (7) of regulation 7 of those Regulations as in force on that date applied and continues to apply;

(5) For the purposes of paragraph (4), the claimant shall be treated as—

- (a) occupying residential accommodation as his home; or
- (b) a person to whom regulation 9(1A) as inserted by paragraph 9(3)(a) of Schedule 3 to the Consequential Provisions Regulations, applies; or
- (c) a person to whom regulation 9(6) as inserted by paragraph 9(5)(a) of Schedule 3 to the Consequential Provisions Regulations, applies; or
- (d) a person to whom regulation 9(6) as inserted by paragraph 9(7)(a) of Schedule 3 to the Consequential Provisions Regulations, applies,

in any period during which he is treated as occupying the accommodation as his home pursuant to regulation 7(12), (13) or (17).

(6) Notwithstanding paragraphs (1), (2) and (3) where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly tariff income of £1.

(7) For the purposes of paragraphs (1), (2) and (3), capital includes any income treated as capital under regulation 46 (income treated as capital).

(8) For the purposes of this regulation and subject to paragraph (9), “residential accommodation” means accommodation which is provided by an establishment—

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(3) [S.I. 1987/1971](#).

- (a) under sections 21 to 24 of the National Assistance Act 1948<sup>(4)</sup> (provision of accommodation) or under section 59 of the Social Work (Scotland) Act 1968<sup>(5)</sup> (provision of residential and other establishments) where board is not available to the claimant and the home in which the accommodation is provided is either owned or managed or owned and managed by a local authority;
- (b) which is managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament (other than a social services authority) and provides both board and personal care for the claimant; and in this sub-paragraph, “personal care” means care which includes assistance with bodily functions where such assistance is required;
- (c) which is an Abbeyfield Home,

and in this definition, “board” refers to the availability to the claimant in the home in which his accommodation is provided of cooked or prepared food, where the food is made available to him in consequence solely of his paying the charge for the accommodation or any other charge which he is required to pay as a condition of occupying the accommodation, or both those charges and is made available for his consumption without any further charge to him.

(9) Paragraph (8) shall not apply to residential accommodation of the type referred to in sub-paragraphs (a) to (c) of paragraph (8) where such accommodation is residential accommodation for the purpose of regulation 9 unless the claimant is a person to whom paragraphs 10, 11 or 12 of Schedule 3 to the Social Security (Care Homes and Independent Hospitals) Regulations 2005 apply<sup>(6)</sup>.

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(4) 1948 c. 29; Section 21 was amended by the Social Work (Scotland) Act 1968 (c. 49), section 95(2) and Schedule 9; the Local Government Act 1972 (c. 70), sections 195 and 272, Schedule 23, paragraph 2 and Schedule 30; the National Health Service Reorganisation Act 1973 (c. 32), section 58 and Schedule 5, paragraph 44; the Housing (Homeless Persons) Act 1977 (c. 48), section 20(4) and the Schedule; the Children Act 1989 (c. 41), section 108(5) and Schedule 13, paragraph 11(1); the National Health Service and Community Care Act 1990 (c. 19), sections 42(1) and 66(1) and (2) and Schedule 9, paragraph 5(1) to (3) and Schedule 10 and the Community Care (Residential Accommodation) Act 1998 (c. 19), section 1. section 22 was amended by section 39(1) of, and paragraph 6 of Schedule 6 to, the Ministry of Social Security Act 1966 (c. 20), by section 35(2) of, and paragraph 3(b) of Schedule 7 to, the Supplementary Benefits Act 1976 (c. 71), by section 20 of, and paragraph 2 of Schedule 4 to, the Social Security Act 1980 (c. 30), and by section 86 of, and paragraph 32 of Schedule 10 to, the Social Security Act 1986 (c. 50). Section 24 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1(1); the National Health Service (Scotland) Act 1972 (c. 58), Schedule 6 paragraph 82; the Local Government Act 1972 (c. 58), Schedule 6 paragraph 82; the Local Government Act 1972 (c. 70), Schedule 23 paragraph 2; the National Health Service Reorganisation Act 1972 (c. 32), Schedule 4 paragraph 45 and the Housing (Homeless Persons) Act 1977 (c. 48), Schedule.

(5) 1968 c. 49.

(6) S.I. 2005/2687.