

SCHEDULE 5

Capital disregards: pensioners

PART 1

Capital to be disregarded

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

2. Any premises which the applicant intends to occupy as the applicant's home, and in respect of which the applicant is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which the applicant first sought such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable the applicant to obtain possession and commence occupation of those premises.

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

4. Any premises occupied in whole or in part—

- (a) by a person who is a relative of the applicant or the applicant's partner as that person's home where that person has attained the qualifying age for state pension credit or is incapacitated;
- (b) by the former partner of the applicant as that person's home; but this provision does not apply where the former partner is a person from whom the applicant is estranged or divorced or with whom the applicant had formed a civil partnership that has been dissolved.

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

6. Where an applicant has ceased to occupy what was formerly the dwelling occupied as the home following the applicant's estrangement or divorce from the applicant's former partner or the dissolution of a civil partnership with the applicant's former partner, that dwelling for a period of 26 weeks from the date on which the applicant ceased to occupy that dwelling or, where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

7. Any premises where the applicant is taking reasonable steps to dispose of the whole of the applicant's interest in those premises, for a period of 26 weeks from the date on which the applicant first took such steps, or such longer period as is reasonable in the circumstances to enable the applicant to dispose of those premises.

8. All personal possessions.

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

10. The assets of any business owned in whole or in part by the applicant if—

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- (a) the applicant is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but
- (b) the applicant intends to become engaged (or, as the case may be, re-engaged) as a self-employed earner in that business as soon as the applicant recovers or is able to become engaged, or re-engaged, in that business,

for a period of 26 weeks from the date on which the application for a reduction under an authority's scheme is made or, if it is unreasonable to expect the applicant to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable the applicant to become so engaged or re-engaged.

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

12. The value of any funeral plan contract; and for this purpose, "funeral plan contract" means a contract under which—

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

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

- (a) the applicant;
- (b) the applicant's partner;
- (c) the applicant's deceased spouse or deceased civil partner; or
- (d) the applicant's partner's deceased spouse or deceased civil partner,

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

14.—(1) Subject to sub-paragraph (2), the amount of any trust payment made to an applicant or an applicant's partner who is—

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

(2) Where a trust payment is made to—

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

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to an applicant or an applicant's partner who is—

- (a) the diagnosed person;
- (b) a diagnosed person's partner or was a diagnosed person's partner at the date of the diagnosed person's death; or

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- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death.
- (4) Where a payment such as referred to in sub-paragraph (3) is made to—
 - (a) a person referred to in sub-paragraph (3)(a) or (b), that sub-paragraph is to apply for the period beginning on the date on which the payment is made and ending on the date on which that person dies;
 - (b) a person referred to in sub-paragraph (3)(c), that sub-paragraph is to apply for the period beginning on the date on which the payment is made and ending two years after that date.
- (5) In this paragraph, a reference to a person—
 - (a) being the diagnosed person's partner;
 - (b) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death is to include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a care home or an independent hospital.

- (6) In this paragraph—
 - “diagnosed person” means a person who has been diagnosed as suffering from, or who, after that person's death, has been diagnosed as having suffered from, variant Creutzfeldt-Jakob disease;
 - “relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;
 - “trust payment” means a payment under a relevant trust.

15. The amount of any payment, other than a war pension, to compensate for the fact that the applicant, the applicant's partner, the applicant's deceased spouse or civil partner or the applicant's partner's deceased spouse or civil partner—

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

during the Second World War.

16.—(1) Any payment made under or by—

- (a) the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, or the London Bombings Relief Charitable Fund (collectively referred to in this paragraph as “the Trusts”); or
- (b) the Independent Living Fund (2006).

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under or by any of the Trusts and which is made to or for the benefit of that person's partner or former partner—

- (a) from whom that person is not, or where that person has died was not, estranged or divorced, or
- (b) with whom that person has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person which derives from a payment

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made under or by any of the Trusts and which is made to or for the benefit of the person who is suffering from haemophilia or who is a qualifying person.

- (4) Sub-paragraph (3) does not apply if—
 - (a) the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, or
 - (b) where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death.
- (5) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under or by any of the Trusts, where—
 - (a) that person has no partner or former partner from whom that person is not estranged or divorced or with whom that person has formed a civil partnership that has not been dissolved, nor any child who is or had been a member of that person's household; and
 - (b) the payment is made either—
 - (i) to that person's parent or step-parent; or
 - (ii) where that person at the date of the payment is a child or a student who has not completed full-time education and has no parent or step-parent, to any person standing in the place of that child or young person's parent or that student's parent, but only for a period from the date of the payment until the end of two years from that person's death.
- (6) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under or by any of the Trusts, where—
 - (a) that person at the date of that person's death ("the relevant date") had no partner or former partner from whom that person was not estranged or divorced or with whom that person had formed a civil partnership that had not been dissolved, nor any child who was or had been a member of that person's household; and
 - (b) the payment is made either—
 - (i) to that person's parent or step-parent; or
 - (ii) where that person at the relevant date was a child or a student who had not completed full-time education and had no parent or step-parent, to any person standing in place of that child or young person's parent or that student's parent, but only for a period of two years from the relevant date.
- (7) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

17.—(1) An amount equal to the amount of any payment made in consequence of any personal injury to the applicant or, if the applicant has a partner, to the partner.

- (2) Where the whole or part of the payment is administered—
 - (a) by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998, or the Court of Protection, or on behalf of a person where the payment can only be disposed of by order or direction of any such court;
 - (b) in accordance with an order made under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of those Rules; or
 - (c) in accordance with the terms of a trust established for the benefit of the applicant or the applicant's partner,

the whole of the amount so administered.

18. Any amount specified in paragraph 19, 20, 21 or 25 for a period of one year beginning with the date of receipt.

19. Amounts paid under a policy of insurance in connection with the loss of or damage to the property occupied by the applicant as the applicant's home and to the applicant's personal possessions.

20. So much of any amounts paid to the applicant or deposited in the applicant's name for the sole purpose of—

- (a) purchasing premises which the applicant intends to occupy as the applicant's home; or
- (b) effecting essential repairs or alterations to the premises occupied or intended to be occupied by the applicant as the applicant's home.

21.—(1) Subject to paragraph 22 any amount paid—

- (a) by way of arrears of benefit;
- (b) by way of compensation for the late payment of benefit;
- (c) in lieu of the payment of benefit;
- (d) to rectify, or compensate for, an official error, as defined for the purposes of paragraph 22, being an amount to which that paragraph does not apply;
- (e) by a local authority out of funds provided under either section 93 of the Local Government Act 2000⁽¹⁾ under a scheme known as "Supporting People" or section 91 of the Housing (Scotland) Act 2001.

(2) In sub-paragraph (1), "benefit" means—

- (a) attendance allowance under section 64 of the SSCBA;
- (b) disability living allowance;
- (c) personal independence payment;
- (d) an AFIP;
- (e) income support;
- (f) income-based jobseeker's allowance;
- (g) state pension credit;
- (h) housing benefit;
- (i) council tax benefit;
- (j) child tax credit;
- (k) an increase of a disablement pension under section 104 of the SSCBA (increase where constant attendance is needed), and any further increase of such a pension under section 105 of the SSCBA (increase for exceptionally severe disablement);
- (l) any amount included on account of the applicant's exceptionally severe disablement or need for constant attendance in a war disablement pension or a war widow's or widower's pension;
- (m) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001;
- (n) working tax credit; or
- (o) income-related employment and support allowance.

(1) 2000 c 22

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22.—(1) Subject to sub-paragraph (3), any payment of £5,000 or more which has been made to rectify, or to compensate for, an official error relating to a relevant benefit and which has been received by the applicant in full on or after the day on which the applicant became entitled to a reduction under an authority's scheme.

- (2) Subject to sub-paragraph (3), the total amount of any payments disregarded under—
- (a) paragraph 7(2) of Schedule 10 to the Income Support (General) Regulations 1987;
 - (b) paragraph 12(2) of Schedule 8 to the Jobseeker's Allowance Regulations 1996;
 - (c) paragraph 9(2) of Schedule 5 to the Council Tax Benefit Regulations 2006;
 - (d) paragraph 20A of Schedule 5 to the State Pension Credit Regulations 2002;
 - (e) paragraph 11(2) of Schedule 9 to the Employment and Support Allowance Regulations 2008,

where the award in respect of which the payments last fell to be disregarded under those Regulations either terminated immediately before the relevant date or is still in existence at that date.

(3) Any disregard which applies under sub-paragraph (1) or (2) is to have effect until the award comes to an end.

(4) In this paragraph—

“the award”, except in sub-paragraph (2), means—

- (a) the award of a reduction under an authority's scheme during which the relevant sum or, where it is paid in more than one instalment, the first instalment of that sum is received; and
- (b) where that award is followed by one or more further awards which, or each of which, begins immediately after the previous award ends, such further awards until the end of the last such award, provided that, for such further awards, the applicant—
 - (i) is the person who received the relevant sum;
 - (ii) is the partner of that person; or
 - (iii) was the partner of that person at the date of that person's death;

“official error”—

- (a) where the error relates to housing benefit, or council tax benefit (in respect of any period before 1st April 2013), has the meaning given by regulation 1(2) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001; and
- (b) where the error relates to any other relevant benefit, has the meaning given by regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999;

“the relevant date” means the date on which the application for a reduction under an authority's scheme was made; and

“relevant benefit” means any benefit specified in paragraph 21(2); and

“the relevant sum” means the payment referred to in sub-paragraph (1) or the total amount referred to in sub-paragraph (2).

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

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

25. Any arrears of supplementary pension which is disregarded under paragraph 4 of Schedule 4 (amounts to be disregarded in the calculation of income other than earnings: pensioners) or of any amount which is disregarded under paragraph 5 or 6 of that Schedule.

26. The dwelling occupied as the home; but only one dwelling is to be disregarded under this paragraph.

27. Where a person elects to be entitled to a lump sum under Schedule 5 or 5A to the SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005, or is treated as having made such an election, and a payment has been made pursuant to that election, an amount equal to—

- (a) except where sub-paragraph (b) applies, the amount of any payment or payments made on account of that lump sum; or
- (b) the amount of that lump sum,

but only for so long as that person does not change that election in favour of an increase of pension or benefit.

28. Any payments made by virtue of regulations made under—

- (a) section 57 of the Health and Social Care Act 2001 (direct payments);
- (b) section 12B of the Social Work (Scotland) Act 1968 (direct payments in respect of community care services); or
- (c) sections 12A to 12C of the National Health Service Act 2006 (direct payments for health care);
- (d) Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972⁽²⁾ (general social welfare); or
- (e) section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002⁽³⁾ (direct payments).

⁽²⁾ S.I.1972/1265 (N.I. 14).

⁽³⁾ 2002 c. 6.