
STATUTORY RULES OF NORTHERN IRELAND

2004 No. 8

Housing Renewal Grants (Reduction of Grant) Regulations (Northern Ireland) 2004

PART IV

INCOME AND CAPITAL

CHAPTER V

other income

Determination of income other than earnings

30.—(1) For the purposes of regulation 23 (average weekly income other than earnings), the income of a relevant person which does not consist of earnings to be taken into account shall, subject to paragraphs (2) and (3), be his gross income and any capital treated as income under regulations 31 (capital treated as income) or 33 (modifications in respect of child and young person).

(2) There shall be disregarded from the determination of a relevant person's gross income under paragraph (1) any sum, where applicable, specified in Schedule 3.

(3) Where the payment of any benefit under the 1992 Act is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

(4) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 25(2) applies (payments which are not earnings).

Capital treated as income

31. The following shall be treated as income –

- (a) any payment received under an annuity; and
- (b) any payment made in consequence of any personal injury to a relevant person pursuant to any agreement or court order, where such payments are to be made, wholly or partly, by way of periodical payments.

Notional income

32.—(1) A relevant person shall be treated as possessing income of which he has deprived himself for the purpose of increasing the amount of grant.

(2) Except in the case of –

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

(d) any sum to which paragraph 39, 40 or 41 of Schedule 4 refers, any income which would have become available to the relevant person 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 have been acquired had an application been made.

(3) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and –

(a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where –

(i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;

(ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or

(iii) income withdrawal is not available to him under that scheme; or

(b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

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

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

(5) The amount of any income foregone in a case to which either paragraph (3)(a)(iii) or subparagraph (3)(b) applies shall be the income that the relevant person could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available, and may be determined taking account of information provided by the pension fund holder in accordance with paragraph (7).

(6) In the case of an application to which Article 61 or 62 of the Order applies, where a relevant person or any partner is aged not less than 60 and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, he shall where the Executive so requires furnish the following information –

(a) the name and address of the pension fund holder;

(b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

(7) In the case of an application to which Article 61 or 62 of the Order applies, where the pension fund holder receives from the Executive a request for details concerning a personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (6) refers, the pension fund holder shall provide the Executive with any information to which paragraph (8) refers.

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

(a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;

(b) in the case of –

(i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or

- (ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,
- calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.
- (9) Any payment of income, other than any of the payments referred to in paragraph (10), made –
- (a) to a third party in respect of a single relevant person or a member of his 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 relevant person or, as the case may be, by that member;
 - (b) to a third party in respect of a relevant person being a single person or in respect of a member of the family (but not a member of the third party’s family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single person or by that member to the extent that it is used for food, ordinary clothing or footwear, household fuel, eligible rates or rent to which regulation 9 or 10 of the Housing Benefit (General) Regulations (Northern Ireland) 1987(1) refers, or both, of that single person or, as the case may be, of any member of that family;
 - (c) to a relevant person being a single person or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single person or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.
- (10) The payments for the purposes of the exclusion in paragraph (9) are any payment of income –
- (a) made under the Macfarlane Trusts, the Fund, the Eileen Trust or the Independent Living Funds;
 - (b) made pursuant to section 19(1)(a) of the Coal Industry Act 1994(2) (concessionary coal);
 - (c) made pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950(3) in respect of a person’s participation –
 - (i) in an employment programme specified under regulation 75(1)(a)(ii)(4) of the Jobseeker’s Allowance Regulations;
 - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
 - (iii) in a qualifying course within the meaning specified in regulation 17A(7)(5) of those Regulations; or
 - (iv) in the Preparation for Employment Programme or the Preparation for Employment Programme for 50 plus;
 - (d) made 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

(1) S.R. 1987 No. 461; the relevant amending regulations are S.R. 1988 No. 424, S.R. 1990 No. 297, S.R. 1990 No. 442, S.R. 1993 No. 145, S.R. 1993 No. 149 and S.R. 1996 No. 111

(2) 1994 c. 21

(3) 1950 c. 29 (N.I.); section 1(1) was substituted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and section 1(2) and (3) was substituted by Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(4) Regulation 75 was substituted by regulation 8 of S.R. 1997 No. 541 and amended by S.R. 1998 No. 182, S.R. 2000 No. 197 and S.R. 2001 No. 151

(5) Regulation 17A was inserted by regulation 4 of S.R. 1998 No. 198 and amended by S.R. 1998 No 418 and S.R. 1999 No. 467

sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980(6);

- (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 income apart from that payment.

(11) Subject to paragraph (12), where –

- (a) a relevant person performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area;

the relevant person shall be treated as possessing such earnings (if any) as is reasonable for that employment unless the relevant person satisfies the Executive that the means of that person are insufficient for him to pay or pay more for the service.

(12) Paragraph (11) shall not apply –

- (a) to a relevant person who is engaged by a charitable or voluntary organisation or is a volunteer if the Executive is satisfied that it is reasonable for him in any of those cases to provide his services free of charge; or
- (b) to a service performed in connection with the relevant person's participation –
 - (i) in an employment or training programme in accordance with regulation 19(1)(p) of the Jobseeker's Allowance Regulations, other than where the service is performed in connection with the claimant's participation in the Preparation for Employment Programme or the Preparation for Employment Programme for 50 plus; or
 - (ii) the relevant person's or the relevant person's partner's participation in an employment or training programme as defined in regulation 19(3) of the Jobseeker's Allowance Regulations for which a training allowance is not payable or, where such an allowance is payable, it is payable for the sole purpose of reimbursement of travelling or meal expenses to the person participating in that programme.

(13) Where a relevant person is treated as possessing any income under any of paragraphs (1) to (9), the foregoing provisions of this Part shall apply for the purposes of determining the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(14) Where a relevant person is treated as possessing any earnings under paragraph (11) the foregoing provisions of this Part shall apply for the purposes of determining the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (3) of regulation 26 (determination of net earnings of employed earners) shall not apply and his net earnings shall be determined by taking into account those earnings which he is treated as possessing, less –

- (a) an amount in respect of income tax equivalent to an amount determined by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate or the basic rate and higher rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal reliefs) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate and, if appropriate, the basic rate and higher rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be determined on a pro-rata basis;

- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the 1992 Act in respect of those earnings if –
 - (i) those earnings were actual earnings; and
 - (ii) the rate of any primary percentage applicable to those earnings were the rate applicable at the date of application; and
 - (c) one-half of any sum payable by the relevant person by way of a contribution towards an occupational or personal pension scheme.
- (15) In paragraph (9) –
- (a) “rates or rent” means eligible rates or rent to which regulations 9 or 10, as the case may be, of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refer, less any deductions in respect of non-dependants which fall to be made under regulation 63(7) (non-dependant deductions) of those regulations;
 - (b) “ordinary clothing or footwear” means clothing or footwear for normal daily use but does not include school uniforms, or clothing or footwear used solely for sporting activities.
- (16) Where the relevant person is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary, Class 1 contributions under this regulation shall be such amounts as would have been deducted had the relevant person been employed in Northern Ireland.

Modifications in respect of child and young person

33.—(1) Where the income of a child or young person, other than income consisting of any maintenance payment whether under a court order or not, determined in accordance with Chapters I to V of this Part exceeds the amount included under Schedule 1 in the determination of the relevant person’s applicable amount for that child or young person by way of the personal allowance and any disabled child premium and any enhanced disability premium the excess shall not be treated as income of the relevant person.

(2) Where the capital of a child or young person, if determined in accordance with Chapter VI in like manner as for the relevant person, except as provided in paragraph (5), would exceed £6,000, any income of that child or young person, other than income consisting of any maintenance payment whether under a court order or not, shall not be treated as income of the relevant person.

(3) In determining the net earnings or net profit of a child or young person there shall be disregarded (in addition to any sum which falls to be disregarded under paragraphs 13 and 14 of Schedule 2) any sum specified in paragraphs 15 and 16 of that Schedule.

(4) Any income of a child or young person which is to be disregarded under Schedule 3 shall be disregarded in such manner as to produce the result most favourable to the relevant person.

(5) There shall be treated as income any capital of a child or young person payable to him by instalments, one or more of which is outstanding at the date of the application, where the instalment or aggregate of all the instalments outstanding at that date, taken together with the amount of that child’s or young person’s other capital calculated in accordance with Chapter VI in like manner as for the relevant person, would exceed £6,000.

(7) Regulation 63 was amended by S.R. 1989 No. 125, S.R. 1990 Nos. 136 and 345, S.R. 1991 Nos. 47 and 79, S.R. 1992 Nos. 404 and 549, S.R. 1993 Nos. 195 and 233 and S.R. 1994 No. 81