
STATUTORY RULES OF NORTHERN IRELAND

2004 No. 8

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

PART IV

INCOME AND CAPITAL

CHAPTER VI

capital

Determination of capital

34.—(1) The capital of a relevant person to be taken into account shall, subject to paragraph (2), be the whole of his capital determined in accordance with this Part and any income treated as capital under regulation 36 (income treated as capital).

(2) There shall be disregarded from the determination of a relevant person's capital under paragraph (1), any capital, where applicable, specified in Schedule 4.

Disregard of capital of child or young person

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

Income treated as capital

36.—(1) Any bounty derived from employment to which paragraph 6 of Schedule 2 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 –

- (a) income tax under Schedule D or E;
- (b) income tax under the legislation of the Republic of Ireland which is analogous to income tax under Schedule D or E,

shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 25(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 3, 5, 8, 14, 25 or 26 of Schedule 4, any income derived from capital over the period of 52 weeks immediately preceding the application shall be treated as capital but only from the date it is normally due to be credited to the relevant person's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the relevant person's employer shall be treated as capital except insofar as the advance or loan is spent; and thereupon the advance or loan, so far as it is spent, shall not be treated as income.

(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 Independent Living (Extension) Fund, the Independent Living (1993) Fund or the Independent Living Fund, shall be treated as capital.

Determination of capital in the United Kingdom

37. Capital which a relevant person possesses in the United Kingdom shall be determined –

- (a) except in a case to which 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 an Ulster or National Savings Certificate –
 - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date of the application, 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.

Determination of capital outside the United Kingdom

38. Capital which a relevant person possesses in a country outside the United Kingdom shall be determined –

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer;

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

Notional capital

39.—(1) A relevant person shall be treated as possessing capital 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) any loan which would be obtained only if secured against capital disregarded under Schedule 4;
 - (d) a personal pension scheme or retirement annuity contract, or
 - (e) any sum to which paragraph 39, 40 or 41 of Schedule 4 refers,

any capital 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) Any payment of capital, other than any of the payments referred to in paragraph (4), 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 single relevant 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 the 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 refers, or both, of that single person or, as the case may be, of any member of that family;
 - (c) to a single relevant 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.
- (4) The payments for the purposes of the exclusion in paragraph (3) are any payment of capital –
- (a) made under any of the Macfarlane Trusts, the Fund, the Eileen Trust or the Independent Living Funds;
 - (b) made pursuant to section 1 of the Employment and Training Act (Northern Ireland) 1950⁽¹⁾ in respect of a person’s participation –
 - (i) in an employment programme specified under section 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 a qualifying course within the meaning specified in regulation 17A(7) of those Regulations; or
 - (iv) in the Preparation for Employment Programme or the Preparation for Employment Programme for 50 plus;
 - (c) 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 sequestration or a judicial factor has been appointed on that person’s estate under section 41 of the Solicitors (Scotland) Act 1980;
 - (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.

(1) 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))

(5) Where a relevant person 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 34 (determination 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 the company and the foregoing provisions of this Chapter shall apply for the purposes of determining that amount as if it were actual capital which he does possess.

(6) For so long as the relevant person 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 relevant person is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of the Chapter shall apply for the purposes of determining its amount as if it were actual capital which he does possess.

(8) In paragraph (3) –

- (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 (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.

Capital jointly held

40. Except where a relevant person possesses capital which is disregarded under regulation 39(5) (notional capital) where a relevant person 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 in the asset in an equal share and the preceding provisions of this Chapter shall apply for the purposes of calculating the amount of capital which the relevant person is treated as possessing as if it were actual capital which the relevant person does possess.

Determination of tariff income from capital

41.—(1) Where the relevant person’s capital determined in accordance with this Part exceeds £6,000 it shall be treated as equivalent to a weekly tariff income of –

- (a) where the relevant person is aged under 60, £1 for each complete £250 in excess of £6,000; and
- (b) where the relevant person is aged 60 or over, £1 for each complete £500 in excess of £6,000.

(2) Notwithstanding paragraph (1) where any part of the excess is not a complete £250 or £500, as the case may be, that part shall be treated as equivalent to a weekly tariff income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 36 (income treated as capital).