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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 216**

**SOCIAL SECURITY**

**The Universal Credit Regulations (Northern Ireland) 2016**

*Made* - - - - - *5th May 2016*

*Laid* - - - - - *10th May 2016*

*Coming into operation in accordance with regulation 1*

The Secretary of State makes the following Regulations in exercise of the powers conferred by Articles, 5, 7(2), 9(2), (3), (5) to (7), 9(5)(a), 10, 11(1) and (3), 12(2) and (3), 13(3), 14(2) and (3), 15(2) to (5), 16(3) to (5), 17, 19(5), 20(2), 22(3) and (4), 23(3) and (5), 24(2)(d), (3) and (4), 25(1), 27(2), 29(1), (7) and (8), 30, 31(2)(a), (6) and (8), 32(4), (5), (9), 33, 36, 38, 43(3) to (7), 45(3)(a), 46, 48 and 101 of, and paragraphs 1,2, 3(2), 4, 5 and 7 of Schedule 1 and paragraphs 2 and 3 of Schedule 5 to, the Welfare Reform (Northern Ireland) Order 2015(1).

Those powers are exercisable by the Secretary of State by virtue of Article 4(1)(a) of the Welfare Reform (Northern Ireland) Order 2015.

**PART 1**

**INTRODUCTION**

**Citation and commencement**

1. These Regulations may be cited as the Universal Credit Regulations (Northern Ireland) 2016 and come into operation on the day on which Article 6 of the Welfare Reform (Northern Ireland) Order 2015 (universal credit) comes into force for all purposes in respect of the whole or any part of Northern Ireland.

**Interpretation**

2.—(1) In these regulations—

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(2);

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(1) S.I. 2015/2006 (N.I. 1).  
(2) 1992 c. 7 (N.I.).

“the EEA Regulations” means the Immigration (European Economic Area) Regulations 2006(3);

“the ESA Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2016(4);

“the ITEPA” means the Income Tax (Earnings and Pensions) Act 2003(5);

“the Medical Evidence Regulations” means the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976(6);

“the Order” means the Welfare Reform (Northern Ireland) Order 2015;

“adopter” has the meaning in regulation 88(3)(a);

“attendance allowance” means—

- (a) an attendance allowance under section 64 of the Contributions and Benefits Act(7);
- (b) an increase of disablement pension under section 104 or 105 of that Act (increases where constant attendance needed and for exceptionally severe disablement);
- (c) a payment by virtue of Article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(8) or any analogous payment;
- (d) any payment based on the need for attendance which is paid as an addition to a war disablement pension;
- (e) armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;

“authority” has the meaning in Article 2 of the Children (Northern Ireland) Order 1995(9);

“bereavement allowance” means an allowance under section 39B of the Contributions and Benefits Act(10);

“blind” means certified as severely sight impaired or blind by a consultant ophthalmologist;

“care leaver” has the meaning in regulation 8(4);

“carer’s allowance” means a carer’s allowance under section 70 of the Contributions and Benefits Act;

“carer element” has the meaning in regulation 30;

“childcare costs element” has the meaning in regulation 32;

“child element” has the meaning in regulation 25;

“close relative” in relation to a person, means—

- (f) a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother or sister; and
- (g) if any of the above is a member of a couple, the other member of the couple;

“confinement” has the meaning in regulation 8(4);

“course of advanced education” has the meaning in regulation 12;

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(3) S.I. 2006/1003.

(4) S.R. 2016 No. 219.

(5) 2003 c. 1.

(6) S.R. 1976 No.175.

(7) Section 64 was amended by section 63(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(S.I. 1999/3147 (N.I. 11)) and paragraph 4 of Schedule 9 to the Order.

(8) S.I. 1983/686; Article 14 was substituted by S.I. 2001/420, Article 15 was amended by S.I. 2001/420 and Article 16 was amended by S.I. 1984/1675 and S.I. 2001/420.

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

(10) Section 39B was inserted by Article 52(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

“disability living allowance” means an allowance under section 71 of the Contributions and Benefits Act;

“earned income” has the meaning in regulation 51;

“employment and support allowance” means an allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007(11) as amended by Schedule 3 and Part 1 of Schedule 12 to the Order;

“expected number of hours per week” has the meaning in regulation 87;

“foster parent” means the person with whom a child is, or is proposed to be, placed under the Foster Placement (Children) Regulations (Northern Ireland) 1996(12);

“grant” has the meaning in regulation 68;

“health care professional” means (except in regulation 96)—

- (h) a registered medical practitioner;
- (i) a registered nurse; or
- (j) an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Act 1999(13);

“housing costs element” has the meaning in regulation 26;

“HSC trust” means a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(14);

“individual threshold” has the meaning in regulation 89(2);

“industrial injuries benefit” means a benefit under Part 5 of the Contributions and Benefits Act;

“jobseeker’s allowance” means an allowance under the Jobseekers (Northern Ireland) Order 1995 as amended by Part 1 of Schedule 12 to the Order (removing references to an income-based allowance);

“LCW element” and “LCWRA element” have the meaning in regulation 28;

“looked after by an authority” in relation to a child or young person means a child or young person who is looked after by an authority within the meaning of Article 25 of the Children (Northern Ireland) Order 1995;

“maternity allowance” means a maternity allowance under section 35 or 35B of the Contributions and Benefits Act(15);

“monthly earnings” has the meaning in regulation 89(6);

“national insurance contributions” means contributions under Part 1 of the Contributions and Benefits Act;

“National Minimum Wage Regulations” means that National Minimum Wage Regulations 2015.(16)

“paid work” means work done for payment or in expectation of payment and does not include being engaged by a charitable or voluntary organisation, or as a volunteer, in circumstances in which the payment received by or due to be paid to the person is in respect of expenses;

“partner” means (except in regulation 77) the other member of a couple;

“personal independence payment” means an allowance under Part 5 of the Order;

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(11) 2007 c. 2 (N.I.).

(12) S.R. 1996 No. 467.

(13) 1999 c. 8.

(14) 1991/194 (N.I. 1) (as amended by Schedule 6 to the Health and Social Care (Reform) Act (Northern Ireland) 2009).

(15) Section 35B was inserted by regulation 2(5) of S.R. 2014 No. 102.

(16) S.I. 2015/621, relevant amending instruments are S.I. 2015/1724 and 2016/68.

“prisoner” means—

- (a) a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
- (b) is on temporary release in accordance with the provisions of the Prison Act (Northern Ireland) 1953<sup>(17)</sup>,

other than a person who is detained in hospital under the provisions of the Mental Health (Northern Ireland) Order 1986<sup>(18)</sup>;

“qualifying young person” has the meaning in regulation 6;

“redundancy” has the meaning in Article 174(1) of the Employment Rights (Northern Ireland) Order 1996<sup>(19)</sup>;

“Regional Health and Social Care Board” means a Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009<sup>(20)</sup>;

“regular and substantial caring responsibilities for a severely disabled person” has the meaning in regulation 31;

“relevant childcare” has the meaning in regulation 37;

“responsible for a child or qualifying young person” has the meaning in regulation 4;

“statutory adoption pay” means a payment under Part XIIIB of the Contributions and Benefits Act<sup>(21)</sup>;

“statutory maternity pay” means a payment under Part XII of the Contributions and Benefits Act;

“statutory paternity pay” means statutory paternity pay under Part XIIIA of the Contributions and Benefits Act<sup>(22)</sup>;

“statutory shared parental pay” means statutory shared parental pay payable in accordance with Part XIIIC of the Contributions and Benefits Act<sup>(23)</sup>;

“statutory sick pay” means a payment under Part XI of the Contributions and Benefits Act;

“student loan” has the meaning in regulation 68;

“terminally ill” means suffering from a progressive disease where death in consequence of that disease can reasonably be expected within 6 months;

“total outstanding reduction period” has the meaning in regulation 98(5);

“trade dispute” has the meaning as in Article 127 of the Trade Union and Labour Relations (Northern Ireland) Order 1995<sup>(24)</sup>;

“unearned income” has the meaning in regulation 66;

“war disablement pension” means any retired pay, pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the ITEPA;

“widowed mother’s allowance” means an allowance under section 37 of the Contributions and Benefits Act;

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(17) 1953 c. 18.

(18) S.I. 1986/595 (N.I. 4).

(19) S.I. 1996/1919 (N.I. 16).

(20) 2009 c. 1 (N.I.).

(21) Part XIIIB was inserted by Article 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)).

(22) Part XIIIA was inserted by Article 5 of the Employment (Northern Ireland) Order 2002.

(23) Part XIIIC was inserted by section 5(2) of the Work and Families Act (Northern Ireland) 2015 (c. 1).

(24) S.I. 1995/1980 (N.I. 12).

“widowed parent’s allowance” means an allowance under section 39A of the Contributions and Benefits Act<sup>(25)</sup>;

“widow’s pension” means a pension under section 38 of the Contributions and Benefits Act.

(2) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954<sup>(26)</sup>, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

### *The Benefit Unit*

#### **Couples**

3.—(1) A couple may be entitled to universal credit as joint claimants where—

- (a) one member does not meet the basic condition in Article 9(1)(b) of the Order (under the qualifying age for state pension credit) if the other member does meet that condition, or
- (b) one member does not meet the basic condition in Article 9(1)(d) of the Order (not receiving education) and is not excepted from that condition if the other member does meet that condition or is excepted from it.

(2) A person who is a member of a couple may make a claim as a single person if the other member of the couple—

- (a) does not meet the basic condition in Article 9(1)(a) of the Order (at least 18 years old) and is not a person in respect of whom the minimum age specified in regulation 8 applies,
- (b) does not meet the basic condition in Article 9(1)(c) of the Order,
- (c) is a prisoner,
- (d) is a person other than a prisoner in respect of whom entitlement does not arise by virtue of regulation 19 (restrictions on entitlement), or
- (e) is a person to whom section 115 of the Immigration and Asylum Act 1999<sup>(27)</sup> (exclusion from benefits) applies,

and regulations 18 (capital), 38 (amounts of elements) and 23 (deduction of income and work allowance) provide for the calculation of the award in such cases.

(3) Where two people are parties to a polygamous marriage, the fact that they are husband and wife is to be disregarded if—

- (a) one of them is a party to an earlier marriage that still subsists, and
- (b) the other party to that earlier marriage is living in the same household,

and, accordingly, the person who is not a party to the earlier marriage may make a claim for universal credit as a single person.

(4) In paragraph (3) “polygamous marriage” means a marriage during which a party to it is married to more than one person and which took place under the laws of a country which permits polygamy.

(5) Where the claimant is a member of a couple, and the other member is temporarily absent from the claimant’s household, they cease to be treated as a couple if that absence is expected to exceed, or does exceed, 6 months.

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<sup>(25)</sup> Section 39A was inserted by Article 52(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

<sup>(26)</sup> 1954 c. 33 (N.I.).

<sup>(27)</sup> 1999 c. 33.

### **When a person is responsible for a child or qualifying young person**

4.—(1) Whether a person is responsible for a child or qualifying young person for the purposes of Part 2 of the Order and these Regulations is determined as follows.

(2) A person is responsible for a child or qualifying young person who normally lives with them.

(3) But a person is not responsible for a qualifying young person if the two of them are living as a couple.

(4) Where a child or qualifying young person normally lives with two or more persons who are not a couple, only one of them is to be treated as responsible and that is the person who has the main responsibility.

(5) The persons mentioned in paragraph (4) may jointly nominate which of them has the main responsibility but the Department may determine that question—

(a) in default of agreement, or

(b) if a nomination or change of nomination does not, in the opinion of the Department, reflect the arrangements between those persons.

(6) Subject to regulation 5, a child or qualifying young person is to be treated as not being the responsibility of any person during any period when the child or qualifying young person is—

(a) looked after by an authority, or

(b) a prisoner.

(7) Where a child or qualifying young person is temporarily absent from a person's household the person ceases to be responsible for the child or qualifying young person if—

(a) the absence is expected to exceed, or does exceed, 6 months, or

(b) the absence is from Northern Ireland and is expected to exceed, or does exceed, one month unless it is in circumstances where an absence of a person for longer than one month would be disregarded for the purposes of regulation 11(2) or (3) (death of close relative etc. or medical treatment or convalescence).

### **Responsibility for children looked after by an authority**

5.—(1) There is excluded from regulation 4(6)(a)—

(a) any period which is in the nature of a planned short term break, or is one of a series of such breaks, for the purpose of providing respite for the person who normally cares for the child or qualifying young person;

(b) any period during which the child or qualifying young person is placed with, or continues to live with, their parent or a person who has parental responsibility for them.

(2) For the purposes of this regulation, a person has parental responsibility if they are not a foster parent and have parental responsibility within the meaning of Article 6 of the Children (Northern Ireland) Order 1995.

### **Meaning of “qualifying young person”**

6.—(1) A person who has reached the age of 16 but not the age of 20 is a qualifying young person for the purposes of Part 2 of the Order and these Regulations—

(a) up to, but not including, the 1st September following their 16th birthday, and

(b) up to, but not including, the 1st September following their 19th birthday, if they are enrolled on, or accepted for, approved training or a course of education—

(i) which is not a course of advanced education,

- (ii) which is provided at a school or college or provided elsewhere but approved by the Department, and
- (iii) where the average time spent during term time in receiving tuition, engaging in practical work, or supervised study or taking examinations exceeds 12 hours per week.

(2) Where the young person is aged 19, they must have started the education or training or been enrolled on or accepted for it before reaching that age.

(3) The education or training referred to in paragraph (1) does not include education or training provided by means of a contract of employment.

(4) “Approved training” means training provided in Northern Ireland directly or indirectly by a Training Organisation pursuant to its arrangement with the Department for Employment and Learning under the Employment and Training Act (Northern Ireland) 1950(28) whether that agreement is known as an operating agreement or by any other name.

(5) A person who is receiving universal credit, an employment and support allowance or a jobseeker’s allowance is not a qualifying young person.

### *General*

#### **Rounding**

7.—(1) Where the calculation of an amount for the purposes of these Regulations results in a fraction of a penny, that fraction is to be disregarded if it is less than half a penny and otherwise it is to be treated as a penny.

(2) Where the calculation of an amount for the purposes of the following regulations results in a fraction of a pound that fraction is to be disregarded—

- (a) regulation 89 (claimants subject to no work-related requirements – the earnings thresholds); and
- (b) regulation 97(6) (circumstances in which requirements must not be imposed).

(3) This regulation does not apply to the calculation in regulation 108 (daily reduction rate) for a reduction under Article 31 or 32 of the Order.

## PART 2

### ENTITLEMENT

#### *Minimum age*

#### **Cases where the minimum age is 16**

8.—(1) For the basic condition in Article 9(1)(a) of the Order (at least 18 years old) the minimum age is 16 years old where a person—

- (a) has limited capability for work,
- (b) is awaiting an assessment under Part 5 to determine whether the person has limited capability for work and has a statement given by a registered medical practitioner in

accordance with the Medical Evidence Regulations which provides that the person is not fit for work,

- (c) has regular and substantial caring responsibilities for a severely disabled person,
- (d) is responsible for a child,
- (e) is a member of a couple the other member of which is responsible for a child or a qualifying young person (but only where the other member meets the basic conditions in Article 9 of the Order),
- (f) is pregnant, and it is 11 weeks or less before her expected week of confinement, or was pregnant and it is 15 weeks or less since the date of her confinement, or
- (g) is without parental support (see paragraph (3)).

(2) Paragraphs (1)(c), (f) and (g) do not include any person who is a care leaver.

(3) For the purposes of paragraph (1)(g) a young person is without parental support where that person is not being looked after by an authority and—

- (a) has no parent,
- (b) cannot live with their parents because—
  - (i) the person is estranged from them, or
  - (ii) there is a serious risk to the person’s physical or mental health, or that the person would suffer significant harm if the person lived with them, or
- (c) is living away from their parents, and neither parent is able to support the person financially because that parent—
  - (i) has a physical or mental impairment,
  - (ii) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court, or
  - (iii) is prohibited from entering or re-entering Northern Ireland.

(4) In this regulation—

“parent” includes any person acting in the place of a parent;

“care leaver” means an eligible child for the purposes of Article 34A of the Children (Northern Ireland) Order 1995<sup>(29)</sup> or a relevant child for the purposes of Article 34B of that Order;

“confinement” means—

- (a) labour resulting in the birth of a living child, or
- (b) labour after 24 weeks of pregnancy resulting in the birth of a child whether alive or dead, and where a woman’s labour begun on one day results in the birth of a child on another day she is to be taken to be confined on the date of the birth.

#### *In Northern Ireland*

### **Persons treated as not being in Northern Ireland**

**9.—(1)** For the purposes of determining whether a person meets the basic condition to be in Northern Ireland, except where a person falls within paragraph (4), a person is to be treated as not being in Northern Ireland if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

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<sup>(29)</sup> Articles 34A and 34B were inserted by sections 1 and 2 of the Children (Leaving Care) Act (Northern Ireland) 2002 (c. 11 (N.I.)).

(2) A person must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the person has a right to reside in one of those places.

(3) For the purposes of paragraph (2), a right to reside does not include a right which exists by virtue of, or in accordance with—

- (a) regulation 13 of the EEA Regulations or Article 6 of Council Directive No.2004/38/EC(30),
  - (b) regulation 14 of the EEA Regulations(31), but only in cases where the right exists under that regulation because the person is—
    - (i) a qualified person for the purposes of regulation 6(1) of those Regulations as a jobseeker, or
    - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker, or
  - (c) regulation 15A(1) of the EEA Regulations(32), but only in cases where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations or Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of their rights as a European citizen).
- (4) A person falls within this paragraph if the person is—
- (a) a qualified person for the purposes of regulation 6 of the EEA Regulations as a worker or a self-employed person,
  - (b) a family member of a person referred to in sub-paragraph (a) within the meaning of regulation 7(1)(a), (b) or (c) of the EEA Regulations,
  - (c) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of the EEA Regulations,
  - (d) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951(33), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(34),
  - (e) a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971(35) where that leave is—
    - (i) discretionary leave to enter or remain in the United Kingdom,
    - (ii) leave to remain under the Destitution Domestic Violence concession(36), or
    - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005(37),
  - (f) a person who has humanitarian protection granted under those rules, or
  - (g) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(38) and who is in the United

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(30) OJL 158, 30.4.04, p. 77.

(31) Regulation 14 was amended by Schedule 1 of S.I. 2012/1547 and S.I. 2013/3032.

(32) Regulation 15A was inserted by regulation 9 of S.I. 2012/1547 and paragraph (4A) of that regulation was inserted by S.I. 2012/2560.

(33) Cmnd. 9171.

(34) Cmnd. 3906.

(35) 1971 c. 77.

(36) The Destitution Domestic Violence concession is published by the Home Office at <http://www.ukba.homeoffice.gov.uk/>

(37) S.I. 2005/1379 as amended by S.I. 2013/630.

(38) 1999 c. 33.

Kingdom as a result of their deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

### **Crown servants and members of Her Majesty's forces posted overseas**

**10.**—(1) The following persons do not have to meet the basic condition to be in Northern Ireland

- (a) a Crown servant or member of Her Majesty's forces posted overseas;
- (b) in the case of joint claimants, the partner of a person mentioned in sub-paragraph (a) while they are accompanying the person on that posting.

(2) A person mentioned in paragraph (1)(a) is posted overseas if the person is performing overseas the duties of a Crown servant or member of Her Majesty's forces and was, immediately before their posting or the first of consecutive postings, habitually resident in the United Kingdom.

(3) In this regulation—

- “Crown servant” means a person holding an office or employment under the Crown, and
- “Her Majesty's forces” has the meaning in the Armed Forces Act 2006<sup>(39)</sup>.

### **Temporary absence from Northern Ireland**

**11.**—(1) A person's temporary absence from Northern Ireland is disregarded in determining whether they meet the basic condition to be in Northern Ireland if—

- (a) the person is entitled to universal credit immediately before the beginning of the period of temporary absence, and
- (b) either—
  - (i) the absence is not expected to exceed, and does not exceed, one month, or
  - (ii) paragraph (3) or (4) applies.

(2) The period of one month in paragraph (1)(b) may be extended by up to a further month if the temporary absence is in connection with the death of—

- (a) the person's partner or a child or qualifying young person for whom the person was responsible, or
- (b) a close relative of the person, or of their partner or of a child or qualifying young person for whom the person or their partner was responsible,

and the Department considers that it would be unreasonable to expect the person to return to Northern Ireland within the first month.

(3) This paragraph applies where the absence is not expected to exceed, and does not exceed, 6 months and is solely in connection with—

- (a) the person undergoing—
  - (i) treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner, or
  - (ii) medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment, where the person had that illness or impairment before leaving Northern Ireland, or
- (b) the person accompanying their partner or a child or qualifying young person for whom they are responsible for treatment or convalescence or care as mentioned in sub-paragraph (a).

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(39) 2006 c. 52.

(4) This paragraph applies where the absence is not expected to exceed, and does not exceed, 6 months and the person is—

- (a) a mariner, or
- (b) continental shelf worker who is in a designated area or a prescribed area.

(5) In this regulation—

“continental shelf worker” means a person who is employed, whether under a contract of service or not, in a designated area or a prescribed area in connection with any activity mentioned in section 11(2) of the Petroleum Act 1998<sup>(40)</sup>;

“designated area” means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964<sup>(41)</sup> as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

“mariner” means a person who is employed under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mails carried by the ship or vessel, and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on its voyage;

“medically approved” means certified by a registered medical practitioner;

“prescribed area” means any area over which Norway or any member State (other than the United Kingdom) exercises sovereign rights for the purpose of exploring the seabed and subsoil and exploiting their natural resources, being an area outside the territorial seas of Norway or such member State, or any other area which is from time to time specified under section 10(8) of the Petroleum Act 1998;

“qualified practitioner” means a person qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

### *Receiving education*

#### **Meaning of “receiving education”**

**12.**—(1) For the basic condition in Article 9(1)(d) of the Order (not receiving education) a qualifying young person is to be treated as receiving education.

(2) In any other case “receiving education” means—

- (a) undertaking a full-time course of advanced education, or
- (b) undertaking any other full-time course of study or training at an educational establishment for which a student loan or grant is provided for the person’s maintenance.

(3) “course of advanced education” means—

- (a) a course of study leading to—
  - (i) a postgraduate degree or comparable qualification,
  - (ii) a first degree or comparable qualification,
  - (iii) a diploma of higher education,

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<sup>(40)</sup> 1998 c. 17.

<sup>(41)</sup> 1964 c. 29.

- (iv) a higher national diploma, or
  - (b) any other course of study which is of a standard above advanced GNVQ or equivalent, including a course which is of a standard above a general certificate of education (advanced level), or above a Scottish national qualification (higher or advanced higher).
- (4) A claimant who is not a qualifying young person and is not undertaking a course described in paragraph (1) is nevertheless to be treated as receiving education if the claimant is undertaking a course of study or training that is not compatible with any work-related requirement imposed on the claimant by the Department.

### **Meaning of “undertaking a course”**

**13.**—(1) For the purposes of these Regulations a person is to be regarded as undertaking a course of education, study or training—

- (a) throughout the period beginning on the date on which the person starts undertaking the course and ending on the last day of the course or on such earlier date (if any) as the person finally abandons it or is dismissed from it, or
  - (b) where a person is undertaking a part of a modular course, for the period beginning on the day on which that part of the course starts and ending —
    - (i) on the last day, on which the person is registered as undertaking that part, or
    - (ii) on such earlier date (if any) as the person finally abandons the course or is dismissed from it.
- (2) The period referred to in paragraph (1)(b) includes—
- (a) where a person has failed examinations or has failed to complete successfully a module relating to a period when the person was undertaking a part of the course, any period in respect of which the person undertakes the course for the purpose of retaking those examinations or completing that module, and
  - (b) any period of vacation within the period specified in paragraph (1)(b) or immediately following that period except where the person has registered to attend or undertake the final module in the course and the vacation immediately follows the last day on which the person is to attend or undertake the course.

(3) In this regulation “modular course” means a course which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

(4) A person is not to be regarded as undertaking a course for any part of the period mentioned in paragraph (1) during which the following conditions are met—

- (a) the person has, with the consent of the relevant educational establishment, ceased to attend or undertake the course because they are ill or caring for another person,
- (b) the person has recovered from that illness or ceased caring for that person within the past year, but not yet resumed the course, and
- (c) the person is not eligible for a grant or student loan.

### **Exceptions to the requirement not to be receiving education**

**14.** A person does not have to meet the basic condition in Article 9(1)(d) of the Order (not receiving education) if —

- (a) the person —

- (i) is undertaking, a full-time course of study or training which is not a course of advanced education,
- (ii) is under the age of 21, or is 21 and reached that age whilst undertaking the course, and
- (iii) is without parental support (as defined in regulation 8(3)),
- (b) the person is entitled to attendance allowance, disability living allowance or personal independence payment, and has limited capability for work,
- (c) the person is responsible for a child or a qualifying young person,
- (d) the person is a single person and a foster parent with whom a child is placed,
- (e) the person is a member of a couple, both of whom are receiving education, and the other member is—
  - (i) responsible for a child or qualifying young person, or
  - (ii) a foster parent with whom a child is placed, or
- (f) the person—
  - (i) has reached the qualifying age for state pension credit, and
  - (ii) is a member of a couple the other member of which has not reached that age.

#### *Accepting a claimant commitment*

#### **Claimant commitment – date and method of acceptance**

**15.**—(1) For the basic condition in Article 9(1)(e) of the Order, a person who has accepted a claimant commitment within such period after making a claim as the Department specifies is to be treated as having accepted that claimant commitment on the first day of the period in respect of which the claim is made.

(2) In a case where an award may be made without a claim, a person who accepts a claimant commitment within such period as the Department specifies is to be treated as having accepted a claimant commitment on the day that would be the first day of the first assessment period in relation to the award in accordance with regulation 22(3) or (4) (assessment periods).

(3) The Department may extend the period within which a person is required to accept a claimant commitment or an updated claimant commitment where the person requests that it review—

- (a) any action proposed as a work search requirement or a work availability requirement, or
- (b) whether any limitation should apply to those requirements,

and it considers that the request is reasonable.

(4) A person must accept a claimant commitment by one of the following methods, as specified by the Department—

- (a) electronically,
- (b) by telephone, or
- (c) in writing.

#### **Claimant commitment – exceptions**

**16.** A person does not have to meet the basic condition to have accepted a claimant commitment if the Department considers that—

- (a) the person cannot accept a claimant commitment because they lack the capacity to do so, or

- (b) there are exceptional circumstances in which it would be unreasonable to expect the person to accept a claimant commitment.

### *Financial conditions*

#### **Minimum amount**

17. For the purposes of Article 10(1)(b) and (2)(b) of the Order (financial conditions: amount payable not less than any prescribed minimum) the minimum is one penny.

#### **Capital limit**

18.—(1) For the purposes of Article 10(1)(a) and (2)(a) of the Order (financial conditions: capital limit)—

- (a) the prescribed amount for a single claimant is £16,000, and
- (b) the prescribed amount for joint claimants is £16,000.

(2) In a case where the person is a member of a couple, but makes a claim as a single person, the claimant's capital is to be treated as including the capital of the other member of the couple.

### *Restrictions on entitlement*

#### **Restrictions on entitlement – prisoners etc.**

19.—(1) Entitlement to universal credit does not arise where a person is—

- (a) a member of a religious order who is fully maintained by their order,
- (b) a prisoner, or
- (c) serving a sentence of imprisonment detained in hospital.

(2) Paragraph (1)(b) does not apply during the first 6 months when the claimant is a prisoner where—

- (a) the person was entitled to universal credit as a single person immediately before becoming a prisoner, and the calculation of their award included an amount for the housing costs element, and
- (b) the person has not been sentenced to a term in custody that is expected to extend beyond that 6 months.

(3) In the case of a prisoner to whom paragraph (2) applies, an award of universal credit is not to include any element other than the housing costs element.

(4) In paragraph (1)(c) a person serving a sentence of imprisonment detained in hospital is a person who is—

- (a) being detained—
  - (i) under Article 53 of the Mental Health (Northern Ireland) Order 1986<sup>(42)</sup>, and
  - (ii) before the day which the Secretary of State certifies to be that person's release date within the meaning of Article 56(3) of that Order (in any case where there is such a release date).

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(42) S.I. 1986/595 (N.I. 4); Article 53(5)(a) was amended by paragraph 27 of Schedule 5 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) and paragraph 38 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c. 26 (N.I.)) and Article 56(3) was amended by paragraph 5(2) to Schedule 5 to the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)).

## Waiting days

**20.**—(1) Entitlement to universal credit does not arise in the first 7 days of the period in respect of which the claim is made if—

(a) on the first day of that period (“the relevant date”) the claimant, or either of joint claimants, falls within Article 27 of the Order (claimants subject to all work-related requirements), and

(b) none of the exceptions in paragraph (3) applies.

(2) A claimant who may fall outside Article 27 of the Order only because they have limited capability for work is to be taken to fall within that Article for the purposes of this regulation.

(3) The exceptions are—

(a) where a new award of universal credit is made—

(i) to a single claimant as a consequence of a previous award having ended when the claimant ceased to be a member of a couple or to joint claimants as a consequence of two previous awards having ended when the claimants became a couple, or

(ii) in any other circumstances in which the assessment periods for that award are to begin on the same day of each month as the assessment periods for a previous award (see regulation 22), or

(b) where, on the relevant date, the claimant (or either of joint claimants)—

(i) is terminally ill,

(ii) has recently been a victim of domestic violence (as determined in accordance with regulation 96(3)),

(iii) is a care leaver or a person under the age of 22 who is claiming universal credit for the first time and was a care leaver before reaching the age of 18,

(iv) is aged 16 or 17 and without parental support (as determined within regulation 8(3)),

(v) has been a prisoner within the month ending on the relevant date, or

(vi) has been entitled to a jobseeker’s allowance or an employment and support allowance within the 3 months ending on the relevant date.

(4) In order to determine whether a single claimant, or either of joint claimants, falls within Article 27 of the Order for the purposes of this regulation, the definition of monthly earnings in regulation 89(6) (claimants subject to no work-related requirements – the earnings threshold) is to be read as if the reference to the current assessment period were a reference to the month that would be the first assessment period of the award if paragraph (1) of this regulation did not apply.

## PART 3

### AWARDS

#### Awards

**21.** For the purpose of determining, under any legislation, whether a person is entitled to any benefit or other advantage by virtue of having an award of universal credit, save where the contrary intention is expressed in that legislation, a person is not treated as being awarded universal credit in respect of any day on which they are not entitled to universal credit.

### Assessment periods

22.—(1) An assessment period is a period of one month beginning with the first date of entitlement and each subsequent period of one month during which entitlement subsists.

(2) Where regulation 20 (waiting days) applies, the first day of entitlement for the purposes of paragraph (1) is the first day after expiry of the 7 days referred to in paragraph (1) of that regulation.

(3) Each assessment period begins on the same day of each month except as follows—

- (a) if the first date of entitlement falls on the 31st day of a month, each assessment period begins on the last day of the month, and
- (b) if the first date of entitlement falls on the 29th or 30th day of a month, each assessment period will begin on the 29th or 30th day of the month (as above) except in February when it begins on the 27th day or, in a leap year, the 28th day.

(4) Where a new award is made to a single person without a claim by virtue of regulation 8(6) (a) or (10) of the Claims and Payments Regulations (old award has ended when the claimant ceased to be a member of a couple) each assessment period for the new award begins on the same day of each month as the assessment period for the old award.

(5) Where a new award is made to members of a couple jointly without claim by virtue of regulation 8(6)(b) or (7) of the Claims and Payments Regulations (two previous awards have ended when the claimants formed a couple) each assessment period for the new award begins on the same day of each month as the assessment period for whichever of the old awards ended earlier.

(6) Where a claim is treated as made by virtue of regulation 8(8) of the Claims and Payments Regulations, (old award ended when a claimant formed a couple with a person not entitled to universal credit) each assessment period in relation to the new award begins on the same day of each month as the assessment period for the old award.

(7) Where a claim is made by a single person or members of a couple jointly and the claimant (or either joint claimant) meets the following conditions—

- (a) the claimant was previously entitled to an award of universal credit the last day of which fell within the 6 months preceding the date on which the claim is made, and
- (b) during that 6 months—
  - (i) the claimant has continued to meet the basic conditions in Article 9 of the Order (disregarding the requirement to have accepted a claimant commitment and any temporary period of absence from Northern Ireland that would be disregarded during a period of entitlement to universal credit), and
  - (ii) the claimant was not excluded from entitlement by regulation 19 (restrictions on entitlement - prisoners etc.),

each assessment period for the new award begins on the same day of each month as the assessment period for the old award or, if there was an old award in respect of each joint claimant, the assessment period that ends earlier in relation to the date on which the claim is made.

(8) For the purposes of this regulation it does not matter if at the beginning of the first assessment period of the new award, the following persons do not meet the basic conditions in Article 9(1)(a) and (c) of the Order (at least 18 years old and in Northern Ireland) or if they are excluded from entitlement under regulation 19 (restrictions on entitlement – prisoners etc.) provided they meet those conditions (and are not so excluded) at the end of that assessment period—

- (a) in a case to which paragraph (6) applies, the member of the couple who was not entitled to universal credit, or
- (b) in a case to which paragraph (7) applies, the member of the couple who does not meet the conditions mentioned in that paragraph.

(9) In this regulation “the Claims and Payments Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016(43).

**Deduction of income and work allowance**

23.—(1) The amounts to be deducted from the maximum amount in accordance with Article 13(3) of the Order (calculation of awards) to determine the amount of an award of universal credit are—

- (a) all of the claimant’s unearned income (or in the case of joint claimants all of their combined unearned income) in respect of the assessment period, and
- (b) the following amount of the claimant’s earned income (or, in the case of joint claimants, their combined earned income) in respect of the assessment period—
  - (i) in a case where no work allowance is specified in the table below (that is where a single claimant does not have, or neither of joint claimants has, responsibility for a child or qualifying young person or limited capability for work), 65 percent of that earned income, or
  - (ii) in any other case, 65 percent of the amount by which that earned income exceeds the work allowance specified in the table.

(2) The amount of the work allowance is—

- (a) if the award contains no amount for the housing costs element, the applicable amount of the higher work allowance specified in the table below, and
- (b) if the award does contain an amount for the housing costs element, the applicable amount of the lower work allowance specified in that table.

(3) In the case of an award where the claimant is a member of a couple, but makes a claim as a single person, the amount to be deducted from the maximum amount in accordance with Article 13(3) of the Order is the same as the amount that would be deducted in accordance with paragraph (1) if the couple were joint claimants.

*Higher work allowance*

Single claimant—	
responsible for one or more children or qualifying young persons and/or has limited capability for work	£397
Joint claimants—	
responsible for one or more children or qualifying young persons and/or where one or both have limited capability for work	£397

*Lower work allowance*

Single claimant—	
responsible for one or more children or qualifying young persons and/or has limited capability for work	£192
Joint claimants—	
responsible for one or more children or qualifying young persons and/or where one or both have limited capability for work	£192

### **Apportionment where re-claim is delayed after loss of employment**

**24.**—(1) This regulation applies where—

- (a) a new award is made in a case to which regulation 22(7) (new claim within 6 months of a previous award) applies, and
- (b) the claimant (or either joint claimant) is not in paid work and has ceased being in paid work since the previous award ended, other than in the 7 days ending with the date on which the claim is made.

(2) In calculating the amount of the award for the first assessment period in accordance with Article 13 of the Order—

- (a) the amount of each element that is to be included in the maximum amount, and
- (b) the amount of earned and unearned income that is to be deducted from the maximum amount,

are each to be reduced to an amount produced by the following formula—

$$N \times \left[ \frac{A \times 12}{365} \right]$$

Where—

N is the number of days in the period beginning with the date on which the claim is made and ending with the last day of the assessment period, and

A is the amount of the element that would otherwise be payable for that assessment period or, as the case may be, the amount of earned and unearned income that would otherwise be deducted for that assessment period.

(3) The period of 7 days in paragraph (1)(b) may be extended if the Department considers there is good reason for the delay in making the claim.

## **PART 4**

### **ELEMENTS OF AN AWARD**

#### *Responsibility for children or young persons*

#### **The child element**

**25.**—(1) The amount to be included in an award of universal credit for each child or qualifying young person for whom a claimant is responsible (“the child element”) is given in the table in regulation 38 (amounts of elements).

(2) An additional amount as shown in that table is to be included in respect of each child or qualifying young person who is disabled and that amount is—

- (a) the lower rate where the child or qualifying young person is entitled to disability living allowance or personal independence payment (unless sub-paragraph (b) applies), or
- (b) the higher rate where the child or qualifying young person is—
  - (i) entitled to the care component of disability living allowance at the highest rate or the daily living component of personal independence payment at the enhanced rate, or
  - (ii) blind.

## *Housing costs*

### **The housing costs element**

**26.**—(1) Paragraphs (2) to (4) specify for the purposes of Article 16 of the Order (housing costs)

- (a) what is meant by payments in respect of accommodation (see paragraph (2)),
  - (b) the circumstances in which a claimant is to be treated as liable or not liable to make such payments (see paragraph (3)),
  - (c) the circumstances in which a claimant is to be treated as occupying or not occupying accommodation and in which land used for the purposes of any accommodation is to be treated as included in the accommodation (see paragraph (4)).
- (2) The payments in respect of accommodation must be—
- (a) payments within the meaning of paragraph 2 of Schedule 1 (“rent payments”);
  - (b) payments within the meaning of paragraph 5 of that Schedule (“owner-occupier payments”);
  - (c) payments within the meaning of paragraph 8 of that Schedule (“service charge payments”).
- (3) The circumstances of the liability to make the payments must be such that—
- (a) the claimant (or either joint claimant)—
    - (i) has a liability to make the payments which is on a commercial basis, or
    - (ii) is treated under Part 1 of Schedule 2 as having a liability to make the payments, and
  - (b) none of the provisions in Part 2 of that Schedule applies to treat the claimant (or either joint claimant) as not being liable to make the payments.
- (4) The circumstances in which the accommodation is occupied must be such that—
- (a) the claimant is treated under Part 1 of Schedule 3 as occupying the accommodation as their home (including any land used for the purposes of the accommodation which is treated under that Part as included in the accommodation), and
  - (b) none of the provisions in Part 2 of that Schedule applies to treat the claimant as not occupying that accommodation.
- (5) References in these Regulations—
- (a) to the housing costs element are to the amount to be included in a claimant’s award under Article 16 of the Order,
  - (b) to a claimant who meets the payment condition, the liability condition or the occupation condition are, respectively, to any claimant in whose case the requirements of paragraph (2), (3) or (4) are met (and any reference to a claimant who meets all of the conditions specified in this regulation is to be read accordingly).

### **Amount of the housing costs element – renters and owner-occupiers**

**27.**—(1) This regulation provides for the amount to be included in an award in respect of an assessment period in which the claimant meets all the conditions specified in regulation 26.

- (2) Schedule 4 has effect in relation to any claimant where—
  - (a) the claimant meets all of those conditions, and
  - (b) the payments for which the claimant is liable are rent payments (whether or not service charge payments are also payable).
- (3) Schedule 5 has effect in relation to any claimant where—

- (a) the claimant meets all of those conditions, and
- (b) the payments for which the claimant is liable are—
  - (i) owner-occupier payments (whether or not service charge payments are also payable), or
  - (ii) service charge payments only.
- (4) Where both paragraphs (2) and (3) apply in relation to a claimant who occupies accommodation under an equity-sharing lease—
  - (a) an amount is to be calculated under each of Schedules 4 and 5, and
  - (b) the amount of the claimant’s housing costs element is the aggregate of those amounts.
- (5) Where, in a case to which paragraph (4) applies, there is a liability for service charge payments, the amount in respect of those payments is to be calculated under Schedule 4.
- (6) “Equity-sharing lease” means a lease of land, the general effect of which is to provide—
  - (a) that, in consideration for the granting of the lease, the lessee shall pay a capital sum, representing a part payment in respect of the cost of acquisition of the premises demised, and a rent, and
  - (b) that the lessee may make additional part payments towards the said cost of acquisition and may exercise an option to purchase the whole or part of the lessor’s reversion in the premises demised.

*Particular needs or circumstances – capability for work*

**Award to include LCW and LCWRA elements**

- 28.**—(1) An award of universal credit is to include an amount—
- (a) in respect of the fact that a claimant has limited capability for work (“the LCW element”), or
  - (b) in respect of the fact that a claimant has limited capability for work and work-related activity (“the LCWRA element”).
- (2) The amounts of those elements are given in the table in regulation 38.
- (3) Whether a claimant has limited capability for work or for work and work-related activity is determined in accordance with Part 5.
- (4) In the case of joint claimants, where each of them has limited capability for work or for work and work-related activity, the award is only to include one element and that is the LCWRA element if one of them has limited capability for work and work-related activity, but otherwise it is the LCW element.

**Period for which the LCW or LCWRA element is not to be included**

- 29.**—(1) An award of universal credit is not to include the LCW or LCWRA element until the beginning of the assessment period that follows the assessment period in which the relevant period ends.
- (2) The relevant period is the period of 3 months beginning with—
- (a) if regulation 42(2) applies (claimant with monthly earnings equal to or above the relevant threshold) the date on which the award of universal credit commences or, if later, the date on which the claimant applies for the LCW or LCWRA element to be included in the award, or

- (b) in any other case, the first day on which the claimant provides evidence of their having limited capability for work in accordance with the Medical Evidence Regulations.
- (3) Where, in the circumstances referred to in paragraph (4), there has been a previous award of universal credit—
  - (a) if the previous award included the LCW or LCWRA element, paragraph (1) does not apply, and
  - (b) if the relevant period in relation to that award has begun but not ended, the relevant period ends on the date it would have ended in relation to the previous award.
- (4) The circumstances are where—
  - (a) immediately before the award commences, the previous award has ceased because the claimant ceased to be a member of a couple or became a member of a couple, or
  - (b) within the six months before the award commences, the previous award has ceased because the financial condition in Article 10(1)(b) (or if it was a joint claim, Article 10(2)(b)) of the Order was not met.
- (5) Paragraph (1) also does not apply if—
  - (a) the claimant is terminally ill, or
  - (b) the claimant—
    - (i) is entitled to an employment and support allowance that includes the support component or the work-related activity component, or
    - (ii) was so entitled on the day before the award of universal credit commenced and has ceased to be so entitled by virtue of section 1A of the Welfare Reform Act (Northern Ireland) 2007<sup>(44)</sup> (duration of contributory allowance).
- (6) Paragraph (1) does not apply where an award includes the LCW element and it is subsequently determined that the claimant has limited capability for work and work-related activity.
- (7) Where, by virtue of this regulation, the condition in Article 10(1)(b) or 10(2)(b) of the Order is not met, the amount of the claimant's income (or, in the case of joint claimants, their combined income) is to be treated during the relevant period as such that the amount payable is the prescribed minimum (see regulation 17).

*Particular needs or circumstances - carers*

**Award to include the carer element**

**30.**—(1) An award of universal credit is to include an amount (“the carer element”) specified in the table in regulation 38 where a claimant has regular and substantial caring responsibilities for a severely disabled person, subject to paragraphs (2) to (4) and section 70(7) of the Contributions and Benefits Act (entitlement by different persons to the carer element and to carer's allowance in respect of the same severely disabled person).

(2) In the case of joint claimants, an award is to include the carer element for both joint claimants if they both qualify for it, but only if they are not caring for the same severely disabled person.

(3) Where two or more persons have regular and substantial caring responsibilities for the same severely disabled person, an award of universal credit may only include the carer element in respect of one of them and that is the one they jointly elect or, in default of election, the one the Department determines.

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<sup>(44)</sup> Section 1A was inserted by Article 57 of the Order.

(4) Where an amount would, apart from this paragraph, be included in an award in relation to a claimant by virtue of paragraphs (1) to (3), and the claimant has limited capability for work or for work and work-related activity, only one out of the carer element, the LCW element and the LCWRA element may be included in respect of the claimant and that element is—

- (a) if the claimant has limited capability for work and work-related activity (and in the case of joint claimants, the LCWRA element has not been included in respect of the other claimant), the LCWRA element, or
- (b) in any other case, the carer element.

### **Meaning of “regular and substantial caring responsibilities for a severely disabled person”**

**31.**—(1) For the purposes of Part 2 of the Order and these Regulations, a person has regular and substantial caring responsibilities for a severely disabled person if they satisfy the conditions for entitlement to a carer’s allowance or would do so but for the fact that their earnings have exceeded the limit prescribed for the purposes of that allowance.

(2) Paragraph (1) applies whether or not the person has made a claim for a carer’s allowance.

(3) A person does not have regular and substantial caring responsibilities for a severely disabled person if the person derives earned income from those caring responsibilities.

### *Particular needs or circumstances – childcare costs*

#### **Award to include childcare costs element**

**32.** An award of universal credit is to include an amount in respect of childcare costs (“the childcare costs element”) in respect of an assessment period in which the claimant meets both—

- (a) the work condition (see regulation 33), and
- (b) the childcare costs condition (see regulation 34).

#### **The work condition**

**33.**—(1) The work condition is met in respect of an assessment period if—

- (a) the claimant is in paid work or has an offer of paid work that is due to start before the end of the next assessment period, and
- (b) if the claimant is a member of a couple (whether claiming jointly or as a single person), the other member is either in paid work or is unable to provide childcare because that person—
  - (i) has limited capability for work,
  - (ii) has regular and substantial caring responsibilities for a severely disabled person, or
  - (iii) is temporarily absent from the claimant’s household.

(2) For the purposes of meeting the work condition in relation to an assessment period a claimant is to be treated as being in paid work if—

- (a) the claimant has ceased paid work—
  - (i) in that assessment period,
  - (ii) in the previous assessment period, or
  - (iii) if the assessment period in question is the first or second assessment period in relation to an award, in that assessment period or in the month immediately preceding the commencement of the award, or

- (b) the claimant is receiving statutory sick pay, statutory maternity pay, statutory paternity pay, statutory adoption pay, statutory shared parental pay or a maternity allowance.

### **The childcare costs condition**

- 34.**—(1) The childcare costs condition is met in respect of an assessment period if—
- (a) the claimant has paid charges for relevant childcare that are attributable to that assessment period (see regulation 36) and those charges have been reported to the Department before the end of that assessment period,
  - (b) the charges are in respect of—
    - (i) a child, or
    - (ii) a qualifying young person who has not reached the 1st September following their 16th birthday,for whom the claimant is responsible, and
  - (c) the charges are for childcare arrangements—
    - (i) that are to enable the claimant to take up paid work or to continue in paid work, or
    - (ii) where the claimant is treated as being in paid work by virtue of regulation 33(2), that are to enable the claimant to maintain childcare arrangements that were in place when the claimant ceased paid work or began to receive those benefits.

(2) The late reporting of charges for relevant childcare may be accepted in the same circumstances as late notification of a change of circumstances may be accepted under regulation 36 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2016<sup>(45)</sup> and in such cases, subject to regulation 36 below, all or part of any such charges may be taken into account in any assessment period to which they relate.

### **Amount of childcare costs element**

- 35.**—(1) The amount of the childcare costs element for an assessment period is the lesser of—
- (a) 85 percent of the charges paid for relevant childcare that are attributable to that assessment period, or
  - (b) the maximum amount specified in the table in regulation 38.
- (2) In determining the amount of charges paid for relevant childcare, there is to be left out of the account any amount—
- (a) that the Department considers excessive having regard to the extent to which the claimant (or, if the claimant is a member of a couple, the other member) is engaged in paid work, or
  - (b) that is met or reimbursed by an employer or some other person or is covered by other relevant support.
- (3) “Other relevant support” means payments out of funds provided by the Department in connection with the claimant’s participation in work-related activity or training.

### **Charges attributable to an assessment period**

- 36.**—(1) Charges paid for relevant childcare are attributable to an assessment period where those charges —

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<sup>(45)</sup> S.R.2016 No. 221.

- (a) are paid in that assessment period for relevant childcare in respect of that assessment period, or
- (b) are paid in that assessment period for relevant childcare in respect of a previous assessment period, or
- (c) were paid in either of the two previous assessment periods for relevant childcare in respect of that assessment period.

(2) For the purposes of paragraph (1)(c), where a claimant pays charges for relevant childcare in advance, the amount which they have paid in respect of any assessment period is to be calculated as follows:

*Step 1*

Take the total amount of the advance payment (leaving out of account any amount referred to in regulation 35(2)).

*Step 2*

Apply the formula—

$$\left[ \frac{PA}{D} \right] \times AP$$

Where—

PA is the amount resulting from Step1,

D is the total number of days covered by the payment referred to in Step 1, and

AP is the number of days covered by the payment which also fall within the assessment period in question.

(3) In this regulation, reference to an assessment period in which charges are paid, or in respect of which charges are paid, includes any month preceding the commencement of the award that begins on the same day as each assessment period in relation to a claimant's current award.

**Meaning of “relevant childcare”**

**37.**—(1) “Relevant childcare” means any of the care described in paragraphs (2) and (3) and other than care excluded by paragraph (4) or (5).

(2) Care provided in Northern Ireland for a child—

- (a) by a person registered under Part XI of the Children (Northern Ireland) Order 1995,
- (b) out of school hours by a school as part of the school activities, or
- (c) by a childcare provider approved in accordance with a scheme under the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006(46).

(3) Care provided for a child outside Northern Ireland by a childcare provider approved by an organisation accredited by the Secretary of State.

(4) The following are not relevant childcare—

- (a) care provided for a child by a close relative of the child, wholly or mainly in the child's home, and
- (b) care provided by a person who is a foster parent of the child.

(5) Care is not within paragraph (2)(a) if it is provided in breach of a requirement to register under Part 2 of the Children (Northern Ireland) Order 1995.

(6) In this regulation—

“child” includes a qualifying young person specified in regulation 34(1)(b)(ii) (the childcare costs condition);

“school” means a school as defined by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986(47).

### *General*

#### **Amounts of elements**

**38.**—(1) The amounts of the standard allowance, the child element, the LCW and LCWRA elements and the carer element (which are all fixed amounts) and the maximum amounts of the childcare costs element are given in the following table.

(2) The amount of the housing costs element is dealt with in regulation 27.

(3) In the case of an award where the claimant is a member of a couple, but claims as a single person, the amounts are those shown in the table for a single claimant.

<i>Element</i>	<i>Amount for each assessment period</i>
Standard allowance—	
single claimant aged under 25	£251.77
single claimant aged 25 or over	£317.82
joint claimants both aged under 25	£395.20
joint claimants where either is aged 25 or over	£498.89
Child element—	
first child or qualifying young person	£277.08
second and each subsequent child or qualifying young person	£231.67
Additional amount for disabled child or qualifying young person—	
lower rate	£126.11
higher rate	£367.92
LCW and LCWRA elements—	
limited capability for work	£126.11
limited capability for work and work-related activity	£315.60
Carer element	£150.39
Childcare costs element—	
maximum amount for one child	£646.35
maximum amount for 2 or more children	£1,108.04

### **Run-on after a death**

**39.** In calculating the maximum amount of an award where any of the following persons has died—

- (a) in the case of a joint award, one member of the couple,
- (b) a child or qualifying young person for whom a claimant was responsible,
- (c) in the case of a claimant who had regular and substantial caring responsibilities for a severely disabled person, that person, or
- (d) a person who was a non dependant within the meaning of paragraph 8(2) of Schedule 4,

the award is to continue to be calculated as if the person had not died for the assessment period in which the death occurs and the following two assessment periods.

## **PART 5**

### **CAPABILITY FOR WORK OR WORK-RELATED ACTIVITY**

#### **Limited capability for work**

**40.**—(1) A claimant has limited capability for work if—

- (a) it has been determined that the claimant has limited capability for work on the basis of an assessment under this Part or under Part 4 of the ESA Regulations, or
- (b) the claimant is to be treated as having limited capability for work (see paragraph (6)).

(2) An assessment under this Part is an assessment as to the extent to which a claimant who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in Schedule 6 or is incapable by reason of such disease or bodily or mental disablement of performing those activities.

(3) A claimant has limited capability for work on the basis of an assessment under this Part if, by adding the points listed in column (3) of Schedule 6 against each descriptor listed in column (2) of that Schedule that applies in the claimant's case, the claimant obtains a total score of at least—

- (a) 15 points whether singly or by a combination of descriptors specified in Part 1 of that Schedule,
- (b) 15 points whether singly or by a combination of descriptors specified in Part 2 of that Schedule, or
- (c) 15 points by a combination of descriptors specified in Parts 1 and 2 of that Schedule.

(4) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 6, it is a condition that the claimant's incapability to perform the activity arises—

- (a) in respect of any descriptor listed in Part 1 of that Schedule, from a specific bodily disease or disablement,
- (b) in respect of any descriptor listed in Part 2 of that Schedule, from a specific mental illness or disablement, or
- (c) in respect of any descriptor or descriptors listed in—

- (i) Part 1 of that Schedule, as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement, or
- (ii) Part 2 of that Schedule, as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.

(5) Where more than one descriptor specified for an activity applies to a claimant, only the descriptor with the highest score in respect of each activity which applies is to be counted.

(6) Subject to paragraph (7) a claimant is to be treated as having limited capability for work if any of the circumstances set out in Schedule 8 applies.

(7) Where the circumstances set out in paragraph 4 or 5 of Schedule 8 apply, a claimant may only be treated as having limited capability for work if the claimant does not have limited capability for work as determined in accordance with an assessment under this Part.

### **Limited capability for work and work-related activity**

**41.—**(1) A claimant has limited capability for work and work-related activity if—

(a) it has been determined that—

(i) the claimant has limited capability for work and work-related activity on the basis of an assessment under this Part, or

(ii) the claimant has limited capability for work-related activity on the basis of an assessment under Part 5 of the ESA Regulations, or

(b) the claimant is to be treated as having limited capability for work and work-related activity (see paragraph (5)).

(2) A claimant has limited capability for work and work-related activity on the basis of an assessment under this Part if, by reason of the claimant's physical or mental condition—

(a) at least one of the descriptors set out in Schedule 7 applies to the claimant,

(b) the claimant's capability for work and work-related activity is limited, and

(c) the limitation is such that it is not reasonable to require that claimant to undertake such activity.

(3) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 7, it is a condition that the claimant's incapability to perform the activity arises—

(a) in respect of descriptors 1 to 8, 15(a), 15(b), 16(a) and 16(b)—

(i) from a specific bodily disease or disablement, or

(ii) as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement, or

(b) in respect of descriptors 9 to 14, 15(c), 15(d), 16(c) and 16(d)—

(i) from a specific mental illness or disablement, or

(ii) as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.

(4) A descriptor applies to a claimant if that descriptor applies to the claimant for the majority of the time or, as the case may be, on the majority of the occasions on which the claimant undertakes or attempts to undertake the activity described by that descriptor.

(5) Subject to paragraph (6), a claimant is to be treated as having limited capability for work and work-related activity if any of the circumstances set out in Schedule 9 applies.

(6) Where the circumstances set out in paragraph 4 of Schedule 9 apply, a claimant may only be treated as having limited capability for work and work-related activity if the claimant does not have limited capability for work and work-related activity as determined in accordance with an assessment under this Part.

### *Work Capability Assessment*

#### **When an assessment may be carried out**

**42.**—(1) The Department may carry out an assessment under this Part where—

- (a) it falls to be determined for the first time whether a claimant has limited capability for work or for work and work-related activity, or
- (b) there has been a previous determination and the Department wishes to determine whether there has been a relevant change of circumstances in relation to the claimant’s physical or mental condition or whether that determination was made in ignorance of, or was based on a mistake as to, some material fact,

but subject to paragraphs (2) to (4).

(2) If the claimant has monthly earnings that are equal to or exceed the relevant threshold, the Department may not carry out an assessment under this Part unless—

- (a) the claimant is entitled to attendance allowance, disability living allowance or personal independence payment, or
- (b) the assessment is for the purposes of reviewing a previous determination that a claimant has limited capability for work or for work and work-related activity that was made on the basis of an assessment under this Part or under Part 4 or 5 of the ESA Regulations,

and, in a case where no assessment may be carried out by virtue of this paragraph, the claimant is to be treated as not having limited capability for work unless they are treated as having limited capability for work or for work and work-related activity by virtue of regulation 40(6) or 41(5).

(3) The relevant threshold for the purposes of paragraph (2) is the amount that a person would be paid at the hourly rate set out in regulation 4 of the National Minimum Wage Regulations for 16 hours per week converted to a monthly amount by multiplying by 52 and dividing by 12.

(4) If it has previously been determined on the basis of an assessment under this Part or under Part 4 or 5 of the ESA Regulations that the claimant does not have limited capability for work, no further assessment is to be carried out unless there is evidence to suggest that—

- (a) the determination was made in ignorance of, or was based on a mistake as to, some material fact, or
- (b) there has been a relevant change of circumstances in relation to the claimant’s physical or mental condition.

#### **Assessment - supplementary**

**43.**—(1) The following provisions apply to an assessment under this Part.

(2) The claimant is to be assessed as if the claimant were fitted with or wearing any prosthesis with which the claimant is normally fitted or normally wears or, as the case may be, wearing or using any aid or appliance which is normally, or could reasonably be expected to be, worn or used.

(3) If a descriptor applies in the case of the claimant as a direct result of treatment provided by a registered medical practitioner for a specific disease, illness or disablement, it is to be treated as applying by reason of the disease, illness or disablement.

#### **Information requirement**

**44.**—(1) The information required to determine whether a claimant has limited capability for work or for work and work-related activity is—

- (a) any information relating to the descriptors specified in Schedule 6 or 7 requested by the Department in the form of a questionnaire, and

(b) any additional information that may be requested by it.

(2) Where the Department is satisfied that there is enough information to make the determination without the information mentioned in paragraph (1)(a), that information is not required.

(3) Where a claimant fails without a good reason to comply with a request under paragraph (1), the claimant is to be treated as not having limited capability for work or, as the case may be, for work and work-related activity.

(4) Paragraph (3) does not apply unless the claimant was sent a further request to provide the information, at least 3 weeks after the date of the first request and at least one week has passed since the further request was sent.

### **Medical examinations**

**45.**—(1) Where it falls to be determined whether a claimant has limited capability for work or for work and work-related activity, the claimant may be called by or on behalf of a health care professional approved by the Department to attend a medical examination.

(2) Where a claimant who is called by or on behalf of such a health care professional to attend a medical examination fails without a good reason to attend or submit to the examination, the claimant is to be treated as not having limited capability for work or, as the case may be, for work and work-related activity.

(3) Paragraph (2) does not apply unless—

- (a) notice of the date, time and place of the examination was given to the claimant at least 7 days in advance, or
- (b) notice was given less than 7 days in advance and the claimant agreed to accept it.

## **PART 6**

### **CALCULATION OF CAPITAL AND INCOME**

#### **CHAPTER 1**

#### **CAPITAL**

#### **What is included in capital?**

**46.**—(1) The whole of a person's capital is to be taken into account unless—

- (a) it is to be treated as income (see paragraphs (3) and (4)), or
- (b) it is to be disregarded (see regulation 48).

(2) A person's personal possessions are not to be treated as capital.

(3) Subject to paragraph (4), any sums that are paid regularly and by reference to a period, for example payments under an annuity, are to be treated as income even if they would, apart from this provision, be regarded, as capital or as having a capital element.

(4) Where capital is payable by instalments, each payment of an instalment is to be treated as income if the amount outstanding, combined with any other capital of the person (and, if the person is a member of a couple the other member), exceeds £16,000, but otherwise such payments are to be treated as capital.

### **Jointly held capital**

47. Where a person and one or more other persons have a beneficial interest in a capital asset, those persons are to be treated, in the absence of evidence to the contrary, as if they were each entitled to an equal share of the whole of that beneficial interest.

### **Capital disregarded**

48.—(1) Any capital specified in Schedule 10 is to be disregarded from the calculation of a person's capital (see also regulations 75 to 77).

(2) Where a period of 6 months is specified in that Schedule, that period may be extended by the Department where it is reasonable to do so in the circumstances of the case.

### **Valuation of capital**

49.—(1) Capital is to be calculated at its current market value or surrender value less—

- (a) where there would be expenses attributable to sale, 10 percent, and
- (b) the amount of any encumbrances secured on it.

(2) The market value of a capital asset possessed by a person in a country outside the United Kingdom is—

- (a) if there is no prohibition in that country against the transfer of an amount equal to the value of that asset to the United Kingdom, the market value in that country, or
- (b) if there is such a prohibition, the amount it would raise if sold in the United Kingdom to a willing buyer.

(3) Where capital is held in currency other than sterling, it is to be calculated after the deduction of any banking charge or commission payable in converting that capital into sterling.

### **Notional capital**

50.—(1) A person is to be treated as possessing capital of which the person has deprived themselves for the purpose of securing entitlement to universal credit or to an increased amount of universal credit.

(2) A person is not to be treated as depriving themselves of capital if the person disposes of it for the purposes of—

- (a) reducing or paying a debt owed by the person, or
- (b) purchasing goods or services if the expenditure was reasonable in the circumstances of the person's case.

(3) Where a person is treated as possessing capital in accordance with this regulation, then for each subsequent assessment period (or, in a case where the award has terminated, each subsequent month) the amount of capital the person is treated as possessing ("the notional capital") reduces—

- (a) in a case where the notional capital exceeds £16,000, by the amount which the Department considers would be the amount of an award of universal credit that would be made to the person (assuming they met the conditions in Article 9 and 10 of the Order) if it were not for the notional capital, or
- (b) in a case where the notional capital exceeds £6,000 but not £16,000 (including where the notional capital has reduced to an amount equal to or less than £16,000 in accordance with sub-paragraph (a) by the amount of unearned income that the notional capital is treated as yielding under regulation 72.

## CHAPTER 2

### EARNED INCOME

#### Meaning of “earned income”

- 51.** “Earned income” means—
- (a) the remuneration or profits derived from—
    - (i) employment under a contract of service or in an office, including elective office,
    - (ii) a trade, profession or vocation, or
    - (iii) any other paid work; or
  - (b) any income treated as earned income in accordance with this Chapter.

#### Meaning of other terms relating to earned income

- 52.**—(1) In this Chapter—
- “car” has the meaning in section 268A of the Capital Allowances Act 2001(48);
  - “employed earnings” has the meaning in regulation 55;
  - “gainful self-employment” has the meaning in regulation 65;
  - “HMRC” means Her Majesty’s Revenue and Customs;
  - “motor cycle” has the meaning in section 268A of the Capital Allowances Act 2001;
  - “the PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(49);
  - “relievable pension contributions” has the meaning in section 188 of the Finance Act 2004(50);
  - “self-employed earnings” has the meaning in regulation 57;
  - “start-up period” has the meaning in regulation 64.
- (2) References in this Chapter to a person participating as a service user are to—
- (a) a person who is being consulted by or on behalf of—
    - (i) a body which has a statutory duty to provide services in the field of health, social care or social housing, or
    - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,in their capacity as a user, potential user, carer of a user or person otherwise affected by the provision of those services,
  - (b) a person who is being consulted by or on behalf of—
    - (i) the Department in relation to any of its functions in the field of social security or child support or under section 1 of the Employment and Training Act (Northern Ireland) 1950(51) (general functions of the Department as to employment and training for employment), or
    - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such functions,in their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person, or

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(48) 2001 c. 2; section 268A was inserted by section 30 of the Finance Act 2009 c. 10.

(49) S.I. 2003/2682.

(50) 2004 c. 12.

(51) 1950 c. 29.

- (c) the carer of a person consulted under sub-paragraph (a) or (b).

### Calculation of earned income – general principles

**53.**—(1) The calculation of a person’s earned income in respect of an assessment period is, unless otherwise provided in this Chapter, to be based on the actual amounts received in that period.

(2) Where the Department—

- (a) makes a determination as to whether the financial conditions in Article 10 of the Order are met before the expiry of the first assessment period in relation to a claim for universal credit, or
- (b) makes a determination as to the amount of a person’s unearned income in relation to an assessment period where a person has failed to report information in relation to that earned income,

that determination may be based on an estimate of the amounts received or expected to be received in that assessment period.

### Surplus earnings

**54.**—(1) This regulation applies in relation to a claim for universal credit where—

- (a) the claimant (or either of joint claimants) was entitled to an award of universal credit that terminated within the 6 months ending on the first day in respect of which the claim is made (“the old award”), and
- (b) there were surplus earnings in the assessment period in which the old award terminated.

(2) Where this regulation applies, the amount of any surplus earnings in a month—

- (a) that would have been an assessment period for the old award had it continued (including the month which is the assessment period in which the old award terminated), and
- (b) is the last such month preceding the first assessment period for a new award,

is to be treated as earned income for the purposes of determining whether there is entitlement to a new award or, if there is entitlement to a new award, calculating the amount of the award.

(3) Whether there are surplus earnings in the assessment period in which the old award terminated or in any of the subsequent 5 months that would have been assessment periods for the old award (had it continued), is to be determined as follows—

#### *Assessment period in which the old award terminated*

There are surplus earnings in the assessment period in which the old award terminated if the total earned income for that assessment period exceeds the relevant threshold (“the original surplus”).

#### Month 1

There are surplus earnings in the first month after the assessment period in which the old award terminated if the original surplus, combined with the total earned income for the month, exceeds the relevant threshold.

#### Month 2

There are surplus earnings in the second month after the assessment period in which the old award ended if the earned income for that month, including any surplus earnings from the previous month, exceeds the relevant threshold.

#### Months 3, 4 and 5

Surplus earnings for the third, fourth and fifth month are to be calculated in the same way as for the second month.

(4) For the purposes of paragraph (3)—

(a) where, in the case of a joint claim, there is an old award for each claimant because each claimant was previously entitled to universal credit as a single person or as a member of a different couple the surplus earnings are to be calculated separately in accordance with paragraph (3) as if the claimant were a single person and, if there is an amount of surplus earnings in relation to both old awards, both amounts are to be treated as earned income for the purposes of the new award, and

(b) if—

(i) a single claimant in relation to a new award was entitled to the old award as a joint claimant, or

(ii) either of the joint claimants in relation to a new award was entitled to the old award as a member of a different couple,

the original surplus is to be apportioned so that the amount to be attributed to the claimant bears the same proportion to the whole of the original surplus as the claimant's earned income in the assessment period in which the old award terminated bears to the total earned income in that assessment period.

(5) A person is not to be treated as having earned income by virtue of this regulation if, at the time that person makes a claim for universal credit, he or she has recently been a victim of domestic violence (within the meaning of regulation 96).

(6) In this regulation—

“total earned income” is earned income of the claimant or, if the claimant is a member of a couple, the couple's combined earned income, but does not include any amount a claimant would be treated as having by virtue of regulation 63 (the minimum income floor);

“the nil UC threshold” is the amount of total earned income above which there would be no entitlement to universal credit, expressed by the following formula—

$$(M - U) \times 100 + WA$$

Where—

M is the maximum amount of an award of universal credit<sup>(52)</sup>;

U is unearned income<sup>(53)</sup>;

WA is the work allowance<sup>(54)</sup>,

and, in determining those amounts in relation to the first and any subsequent months after the termination of the old award, the Department may make such assumptions as to the claimant's circumstances as it considers appropriate;

“the relevant threshold” is the nil UC threshold plus £300.

## Employed earnings

**55.**—(1) This regulation applies for the purposes of calculating earned income from employment under a contract of service or in an office including elective office (“employed earnings”).

<sup>(52)</sup> The maximum amount of an award of universal credit is determined by Article 13(2) of the Welfare Reform (Northern Ireland) Order 2015.

<sup>(53)</sup> For the meaning of “unearned income” see Chapter 3 of Part 6.

<sup>(54)</sup> For the meaning of “work allowance” see Regulation 23.

- (2) Employed earnings comprise any amounts that are general earnings as defined in section 7(3) of the ITEPA but excluding—
- (a) amounts that are treated as earnings under Chapters 2 to 11 of Part 3 of that Act (employment income: earnings and benefit etc treated as income), and
  - (b) amounts that are exempt from income tax under Part 4 of that Act (employment income: exemptions).
- (3) In the calculation of employed earnings the following are to be disregarded—
- (a) expenses that are allowed to be deducted under Chapter 2 of Part 5 of the ITEPA (employment income: deductions allowed from earnings), and
  - (b) expenses arising from participation as a service user (see regulation 52(2)).
- (4) The following benefits are to be treated as employed earnings—
- (a) statutory sick pay;
  - (b) statutory maternity pay;
  - (c) statutory paternity pay;
  - (d) statutory adoption pay; and
  - (e) statutory shared parental pay.
- (5) A repayment of income tax or national insurance contributions received by a claimant from HMRC in respect of a tax year in which the person was in paid work is to be treated as employed earnings unless it is taken into account as self-employed earnings under regulation 57(3).
- (6) In calculating the amount of a person's employed earnings in respect of an assessment period, there are to be deducted from the amount of general earnings or benefits specified in paragraphs (2) to (4)—
- (a) any relievable pension contributions made by the person in that period,
  - (b) any amounts paid by the person in that period in respect of the employment by way of income tax or primary Class 1 contributions under section 6(1) of the Contributions and Benefits Act, and
  - (c) any sums withheld as donations to an approved scheme under Part 12 of the ITEPA (payroll giving) by a person required to make deductions or repayments of income tax under the PAYE Regulations.
- (7) Employed earnings also comprise any payment made under the legislation of, or under any scheme operating in, the Republic of Ireland which is analogous to any income to which paragraph (2) relates.

### **Employee involved in trade dispute**

**56.** A person who has had employed earnings and has withdrawn their labour in furtherance of a trade dispute is, unless their contract of service has been terminated, to be assumed to have employed earnings at the same level as he would have had were it not for the trade dispute.

### **Self-employed earnings — treatment of losses**

**57.—(1)** This regulation applies for the purpose of calculating earned income that is not employed earnings and is derived from carrying on a trade, profession or vocation (“self employed earnings”).

(2) A person's self-employed earnings in respect of an assessment period are to be calculated as follows—

#### *Step 1*

Calculate the amount of the person's profit or loss in respect of each trade, profession or vocation carried on by the person by—

- (a) taking the actual receipts in that assessment period, and
- (b) deducting any amounts allowed as expenses under regulation 59 or 60.

Where a trade, profession or vocation is carried on in a partnership, take the amount of the profit or loss attributable to the person's share in the partnership.

*Step 2*

If the person has carried on more than one trade, profession or vocation in the assessment period, add together the amounts resulting from step 1 in respect of each trade, profession or vocation.

*Step 3*

Deduct from the amount resulting from step 1 or (if applicable) step 2 any payment made by the person to HMRC in the assessment period in respect of—

- (c) Class 2 contributions under section 11(2), (6) or (8) of the Contributions and Benefits Act or Class 4 contributions under section 15 of that Act, or
- (d) income tax incurred by virtue of carrying on a trade, profession or vocation.

If the amount resulting from steps 1 to 3 is nil or a negative amount, the amount of the person's self-employed earnings in respect of the assessment period is nil (and ignore the following steps).

*Step 4*

If the amount resulting from step 3 is greater than nil, deduct from that amount any relievable pension contributions made by the person in the assessment period (unless a deduction has been made in respect of those contributions in calculating the person's employed earnings).

If the amount resulting from this step is nil or a negative amount, the person's self-employed earnings in respect of the assessment period are nil (and ignore the following step).

*Step 5*

If the amount resulting from step 4 is greater than nil, deduct from that amount any unused losses (see regulation 58), taking the oldest first.

If the amount resulting from this step is greater than nil, that is the amount of the person's self-employed earnings for the assessment period.

If the amount resulting from this step is nil or a negative amount, the amount of the person's self-employed earnings in respect of the assessment period is nil.

(3) The receipts referred to in paragraph (2) include receipts in kind and any refund or repayment of income tax, value added tax or national insurance contributions relating to the trade, profession or vocation.

(4) Where the purchase of an asset has been deducted as an expense in any assessment period and, in a subsequent assessment period, the asset is sold or ceases to be used for the purposes of a trade, profession or vocation carried on by the person, the proceeds of sale (or, as the case may be, the amount that would be received for the asset if it were sold at its current market value) are to be treated as a receipt in that subsequent assessment period.

(5) Where the person is a self-employed earner in the Republic of Ireland the amounts to be deducted for income tax and National Insurance contributions under this regulation shall be such amounts as, in the opinion of the Department, would have been deducted had that person been employed in Northern Ireland.

### **Unused losses**

**58.**—(1) For the purpose of regulation 57(2), a person has an unused loss if—

- (a) in calculating the person's self-employed earnings for any of the previous 11 assessment periods, the amount resulting from steps 1 to 3 in regulation 57(2) was a negative amount (a "loss"), and
- (b) the loss has not been extinguished in a subsequent assessment period.

(2) For the purposes of paragraph (1)(b) a loss is extinguished if no amount of that loss remains after it has been deducted at step 5 in regulation 57(2).

(3) Where a person was entitled to a previous award of universal credit and the last day of entitlement in respect of that award fell within the 6 months preceding the first day of entitlement in respect of the new award, the Department may, for the purposes of this regulation (provided the person provides such information as it requires), treat the assessment periods under the previous award and any months between that award and the current award as assessment periods under the current award.

### **Permitted expenses**

**59.**—(1) The deductions allowed in the calculation of self-employed earnings are amounts paid in the assessment period in respect of—

- (a) expenses that have been wholly and exclusively incurred for purposes of the trade, profession or vocation, or
- (b) in the case of expenses that have been incurred for more than one purpose, an identifiable part or proportion that has been wholly and exclusively incurred for the purposes of the trade, profession or vocation,

excluding any expenses that were incurred unreasonably.

(2) Payments deducted under paragraph (1) may include value added tax.

(3) No deduction may be made for payments in respect of—

- (a) expenditure on non-depreciating assets (including property, shares or other assets held for investment purposes);
- (b) repayment of capital in relation to a loan taken out for the purposes of the trade, profession or vocation;
- (c) expenses for business entertainment.

(4) A deduction for a payment of interest in relation to a loan taken out for the purposes of the trade, profession or vocation may not exceed £41.

(5) This regulation is subject to regulation 60.

### **Flat rate deductions for mileage and use of home and adjustment for personal use of business premises**

**60.**—(1) This regulation provides for alternatives to the deductions that would otherwise be allowed under regulation 59.

(2) Instead of a deduction in respect of the actual expenses incurred in relation to the acquisition or use of a motor vehicle, the following deductions are to be allowed according to the mileage covered on journeys undertaken in the assessment period for the purposes of the trade, profession or vocation—

- (a) in a car, van or other motor vehicle (apart from a motorcycle), 45 pence per mile for the first 833 miles and 25 pence per mile thereafter, and

(b) on a motorcycle, 24 pence per mile,  
and, if the motor vehicle is a car, the only deduction allowed for the acquisition or use of that vehicle is a deduction under this paragraph.

(3) Where a person carrying on a trade, profession or vocation incurs expenses in relation to the use of accommodation occupied as their home, instead of a deduction in respect of the actual expenses, a deduction is allowed according to the number of hours spent in the assessment period on income generating activities related to the trade, profession or vocation as follows—

- (a) at least 25 hours but no more than 50 hours, £10;
- (b) more than 50 hours but no more than 100 hours, £18;
- (c) more than 100 hours, £26.

(4) Where premises which are used by a person mainly for the purposes of a trade, profession or vocation are also occupied by that person for his personal use, whether alone or with other persons, the deduction allowed for expenses in relation to those premises is the amount that would be allowed under regulation 59(1) if the premises were used wholly and exclusively for purposes of the trade, profession or vocation, but reduced by the following amount according to the number of persons occupying the premises for his personal use—

- (a) £350 for one person;
- (b) £500 for 2 persons;
- (c) £650 for 3 or more persons.

### **Notional earned income**

**61.**—(1) A person who has deprived himself of earned income, or whose employer has arranged for them to be so deprived, for the purpose of securing entitlement to universal credit or to an increased amount of universal credit is to be treated as possessing that earned income.

(2) Such a purpose is to be treated as existing if, in fact, entitlement or higher entitlement to universal credit did result and, in the opinion of the Department, this was a foreseeable and intended consequence of the deprivation.

(3) If a person provides services for another person and—

- (a) the other person makes no payment for those services or pays less than would be paid for comparable services in the same location, and
- (b) the means of the other person were sufficient to pay for, or pay more for, those services,

the person who provides the services is to be treated as having received the remuneration that would be reasonable for the provision of those services.

(4) Paragraph (3) does not apply where—

- (a) the person is engaged to provide the services by a charitable or voluntary organisation and the Department is satisfied that it is reasonable to provide the services free of charge or at less than the rate that would be paid for comparable services in the same location;
- (b) the services are provided by a person who is participating as a service user (see regulation 52(2)), or
- (c) the services are provided under or in connection with a person's participation in an employment or training programme approved by the Department for Employment and Learning.

### Information for calculating earned income- real time information etc

62.—(1) Unless paragraph (2) applies, a person must provide such information for the purposes of calculating their earned income at such times as the Department may require.

(2) Where a person is, or has been, engaged in an employment in respect of which their employer is a Real Time Information employer—

(a) the amount of the person’s employed earnings from that employment for each assessment period is to be based on the information which is reported to HMRC under the PAYE Regulations and is received by the Department from HMRC in that assessment period,<sup>(55)</sup> and

(b) for an assessment period in which no information is received from HMRC, the amount of employed earnings in relation to that employment is to be taken to be nil.

(3) The Department may determine that paragraph (2) does not apply in respect of —

(a) a particular employment, where it considers that the information from the employer is unlikely to be sufficiently accurate or timely, or

(b) a particular assessment period where—

(i) no information is received from HMRC and the Department considers that this is likely to be because of a failure to report information (which includes the failure of a computer system operated by HMRC, the employer or any other person), or

(ii) where the Department considers that the information received from HMRC is incorrect or fails to reflect the definition of employed earnings in regulation 55, in some material respect.

(4) Where the Department determines that paragraph (2) does not apply, it must make a decision as to the amount of the person’s employed earnings for the assessment period in accordance with regulation 55 (employed earnings) using such information or evidence as it thinks fit.

(5) When the Department makes a decision in accordance with paragraph (4) it may—

(a) treat a payment of employed earnings received by the person in one assessment period as received in a later assessment period (for example where the Department has received information in that later period or would, if paragraph (2) applied, have expected to receive information about that payment from HMRC in that later period), or

(b) where a payment of employed earnings has been taken into account in that decision, disregard information about the same payment which is received from HMRC.

(6) Paragraph (5) also applies where the Department makes a decision under regulation 41(3) of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2016 in a case where the person disputes the information provided by HMRC.

(7) In this regulation “Real Time Information Employer” has the meaning in regulation 2A(1) of the PAYE Regulations<sup>(56)</sup>

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<sup>(55)</sup> See also regulation 41(1) of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decision and Appeals) Regulations (Northern Ireland) 2016 which provides for an alteration in the amount of employed earnings based on information from HMRC to be prescribed for the purposes of section 139D(1)(b)(vi) of the Social Security Administration Act 1992. The effect of this is that the award may be adjusted without a decision by the Secretary of State (subject to the person having the right to request a decision by the Secretary of State where they dispute the information provided by HMRC).

<sup>(56)</sup> Regulation 2A was inserted by regulation 4 of [S.I. 2012/822](#).

### *Gainful self-employment*

#### **Minimum income floor**

**63.**—(1) This regulation applies to a claimant who—

- (a) is in gainful self-employment (see regulation 65), and
- (b) would apart from this regulation, fall within Article 27 of the Order (claimants subject to all work related requirements).

(2) Where this regulation applies to a single claimant, for any assessment period in respect of which the claimant's earned income is less than their individual threshold, the claimant is to be treated as having earned income equal to that threshold.

(3) Where this regulation applies to a claimant who is a member of a couple, for any assessment period in respect of which—

- (a) the claimant's earned income is less than their individual threshold, and
- (b) the couple's combined earned income is less than the couple threshold,

the claimant is to be treated as having earned income equal to their individual threshold minus any amount by which that amount of earned income combined with their partner's earned income would exceed the couple threshold.

(4) In this regulation references to the claimant's individual threshold and to the couple threshold are to the amounts set out in regulation 89(2) and 89(3) respectively, converted to net amounts by deducting such amount for income tax and national insurance contributions as the Department considers appropriate.

(5) Where this regulation applies in respect of an assessment period in which surplus earnings are treated as an amount of earned income under regulation 54 (surplus earnings), that amount is to be added to the claimant's earned income before this regulation is applied and, in the case of joint claimants, it is to be added to the earned income of either member of the couple so as to produce the lowest possible amount of combined earned income after this regulation is applied.

(6) An assessment period referred to in this regulation does not include an assessment period which falls wholly within a start-up period or begins or ends in a start-up period.

#### **Start-up period**

**64.**—(1) A "start-up period" is a period of 12 months and applies from the beginning of the assessment period in which the Department determines that a claimant is in gainful self-employment where—

- (a) the claimant has begun to carry on the trade, profession or vocation which is their main employment in the 12 months preceding the beginning of that assessment period, and
- (b) the claimant is taking active steps to increase their earnings from that employment to the level of the claimant's individual threshold (see regulation 89).

(2) No start-up period may apply in relation to a claimant where a start-up period has previously applied in relation to that claimant, whether in relation to the current award or any previous award of universal credit, unless that previous start-up period—

- (a) began more than 5 years before the beginning of the assessment period referred to in paragraph (1), and
- (b) applied in relation to a different trade, profession or vocation which the claimant has ceased to carry on.

(3) The Department may terminate a start-up period at any time if the person is no longer in gainful self-employment or is no longer taking the steps referred to in paragraph (1)(b).

### Meaning of “gainful self-employment”

65. A claimant is in gainful self-employment for the purposes of regulations 63 and 64 where the Department has determined that—

- (a) the claimant is carrying on a trade, profession or vocation as their main employment,
- (b) their earnings from that trade, profession or vocation are self-employed earnings, and
- (c) the trade, profession or vocation is organised, developed, regular and carried on in expectation of profit.

## CHAPTER 3

### UNEARNED INCOME

#### What is included in unearned income?

66.—(1) A person’s unearned income is any of his income, including income the person is treated as having by virtue of regulation 74 (notional unearned income), falling within the following descriptions—

- (a) retirement pension income (see regulation 67);
- (b) any of the following benefits to which the person is entitled, subject to any adjustment to the amount payable in accordance with regulations under section 71 of the Social Security Administration (Northern Ireland) Act 1992<sup>(57)</sup> (overlapping benefits)—
  - (i) jobseeker’s allowance,
  - (ii) employment and support allowance,
  - (iii) carer’s allowance,
  - (iv) bereavement allowance,
  - (v) widowed mother’s allowance,
  - (vi) widowed parent’s allowance,
  - (vii) widow’s pension,
  - (viii) maternity allowance, or
  - (ix) industrial injuries benefit, excluding any increase in that benefit under section 104 or 105 of the Contributions and Benefits Act (increases where constant attendance needed and for exceptionally severe disablement);
- (c) any benefit, allowance, or other payment which is paid under the law of a country outside the United Kingdom and is analogous to a benefit mentioned in sub-paragraph (b);
- (d) payments made towards the maintenance of the person by his spouse, civil partner, former spouse or former civil partner under a court order or an agreement for maintenance;
- (e) student income (see regulation 68);
- (f) a payment made under section 1 of the Employment and Training Act (Northern Ireland) 1950 which is a substitute for universal credit or is for a person’s living expenses;
- (g) a payment made by one of the sports councils named in section 23(2) of the National Lottery etc. Act 1993<sup>(58)</sup> out of sums allocated to it for distribution where the payment is for the person’s living expenses;
- (h) a payment received under an insurance policy to insure against—
  - (i) the risk of losing income due to illness, accident or redundancy, or

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<sup>(57)</sup> 1992 c. 8.

<sup>(58)</sup> 1993 c. 39.

- (ii) the risk of being unable to maintain payments on a loan, but only to the extent that the payment is in respect of owner-occupier payments within the meaning of paragraph 5 of Schedule 1 in respect of which an amount is included in an award for the housing costs element;
  - (i) income from an annuity (other than retirement pension income), unless disregarded under regulation 75 (compensation for personal injury);
  - (j) income from a trust, unless disregarded under regulation 75 (compensation for personal injury) or 76 (special schemes for compensation);
  - (k) income that is treated as the yield from a person's capital by virtue of regulation 72;
  - (l) capital that is treated as income by virtue of regulation 46(3) or (4);
  - (m) income that does not fall within sub-paragraphs (a) to (l) and is taxable under Part 5 of the Income Tax (Trading and Other Income) Act 2005 (miscellaneous income) (59).
- (2) In paragraph (1)(f) and (g) a person's living expenses are the cost of —
- (a) food;
  - (b) ordinary clothing or footwear;
  - (c) household fuel, rent or other housing costs (including rates),

for the person, their partner and any child or qualifying young person for whom the person is responsible.

#### **Meaning of “retirement pension income”**

**67.**—(1) Subject to paragraph (2), in regulation 66(1)(a) “retirement pension income” has the same meaning as in section 16 of the State Pension Credit Act (Northern Ireland) 2002 as extended by regulation 16 of the State Pension Credit Regulations (Northern Ireland) 2003(60).

(2) Retirement pension income includes any increase in a Category A or Category B retirement pension mentioned in section 16(1)(a) of the State Pension Credit Act (Northern Ireland) 2002 which is payable under Part 4 of the Contributions and Benefits Act in respect of a person's partner.

#### **Person treated as having student income**

**68.**—(1) A person who is undertaking a course of education, study or training (see regulation 13) and has a student loan or a grant in respect of that course, is to be treated as having student income in respect of—

- (a) an assessment period in which the course begins;
- (b) in the case of a course which lasts for 2 or more years, an assessment period in which the second or subsequent year begins;
- (c) any other assessment period in which, or in any part of which, the person is undertaking the course, excluding—
  - (i) an assessment period in which the long vacation begins or which falls within the long vacation, or
  - (ii) an assessment period in which the course ends.

(2) Where a person has a student loan, the student income for any assessment period referred to in paragraph (1) is to be based on the amount of that loan.

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(59) 2005 c. 5.

(60) S.R. 2003 No. 28; regulation 16 was amended by regulation 6(4) of S.R. 2004 No. 394 and regulation 2(3) of S.R. 2005 No. 513.

(3) Where paragraph (2) applies, any grant in relation to the period to which the loan applies is to be disregarded except for—

- (a) any specific amount included in the grant to cover payments which are rent payments in respect of which an amount is included in an award of universal credit for the housing costs element;
- (b) any amount intended for the maintenance of another person in respect of whom an amount is included in the award.

(4) Where paragraph (2) does not apply, the person's student income for any assessment period in which they are treated as having that income is to be based on the amount of their grant.

(5) A person is to be treated as having a student loan where the person could acquire such a loan by taking reasonable steps to do so.

(6) Student income does not include any payment referred to in regulation 66(1)(f) (training allowances).

(7) In this regulation and regulations 69 to 71—

“grant” means any kind of educational grant or award, excluding a student loan or a payment made under a scheme to enable persons under the age of 21 to complete courses of education or training that are not advanced education;

“the long vacation” is a period of no less than one month which, in the opinion of the Department, is the longest vacation during a course which is intended to last for 2 or more years;

“student loan” means a loan towards a student's maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act(61), section 73 of the Education (Scotland) Act 1980(62) or Article 3 of the Education (Student Support) (Northern Ireland) Order) 1998(63) and includes in Scotland, a young student's bursary paid under regulation 4(1) (c) of the Students' Allowances (Scotland) Regulations 2007(64).

### **Calculation of student income - student loans**

**69.**—(1) Where, in accordance with regulation 68(2) a person's student income is to be based on the amount of a student loan for a year the amount to be taken into account is the maximum student loan (including any increases for additional weeks) that the person would be able to acquire in respect of that year by taking reasonable steps to do so.

(2) For the purposes of calculating the maximum student loan in paragraph (1) it is to be assumed no reduction has been made on account of—

- (a) the person's means or the means of their partner, parent or any other person; or
- (b) any grant made to the person.

### **Calculation of student income - grants**

**70.**—(1) Where, in accordance with regulation 68(4), a person's student income is to be based on the amount of a grant, the amount to be taken into account is the whole of the grant excluding any payment—

- (a) intended to meet tuition fees or examination fees,
- (b) in respect of the person's disability,

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(61) 1998 c. 30.

(62) 1980 c. 44.

(63) S.I. 1998/1760(N.I. 14).

(64) S.S.I. 2007/153.

- (c) intended to meet additional expenditure connected with term time residential study away from the person's educational establishment,
- (d) intended to meet the cost of the person maintaining a home at a place other than that at which he resides during the course, except where an award of universal credit includes an amount for the housing costs element in respect of those costs,
- (e) intended for the maintenance of another person, but only if an award of universal credit does not include any amount in respect of that person,
- (f) intended to meet the cost of books and equipment,
- (g) intended to meet travel expenses incurred as a result of the person's attendance on the course, or
- (h) intended to meet childcare costs.

### **Calculation of student income – amount for an assessment period**

71. The amount of a person's student income in relation to each assessment period in which the person is to be treated as having student income in accordance with regulation 68(1) is calculated as follows—

#### *Step 1*

Determine whichever of the following amounts is applicable—

(a) if regulation 68(2) applies (person with a student loan) the amount of the loan (and, if applicable, the amount of any grant) in relation to the year of the course in which the assessment period falls, or

(b) if regulation 68(4) applies (person with a grant but no student loan) the amount of the grant in relation to the year of the course in which the assessment period falls.

If the period of the course is less than a year determine the amount of the grant or loan in relation to the course.

#### *Step 2*

Determine in relation to—

(c) the year of the course in which the assessment period falls, or

(d) if the period of the course is less than a year, the period of the course,

the number of assessment periods for which the person is to be treated as having student income under regulation 68(1).

#### *Step 3*

Divide the amount produced by step 1 by the number of assessment periods produced by step 2.

#### *Step 4*

Deduct £110.

### *General*

### **Assumed yield from capital**

72.—(1) A person's capital is to be treated as yielding a monthly income of £4.35 for each £250 in excess of £6,000 and £4.35 for any excess which is not a complete £250.

(2) Paragraph (1) does not apply where the capital is disregarded or the actual income from that capital is taken into account under regulation 66(1)(i) (income from an annuity) or (j) (income from a trust).

(3) Where a person's capital is treated as yielding income, any actual income derived from that capital, is to be treated as part of the person's capital from the day it is due to be paid to the person.

### Unearned income calculated monthly

**73.**—(1) A person's unearned income is to be calculated as a monthly amount.

(2) Where the period in respect of which a payment of income is made is not a month, an amount is to be calculated as the monthly equivalent—

- (a) weekly payments are multiplied by 52 and divided by 12,
- (b) four-weekly payments are multiplied by 13 and divided by 12,
- (c) three-monthly payments are multiplied by 4 and divided by 12, and
- (d) annual payments are divided by 12.

(3) Where the period in respect of which unearned income is paid begins or ends during an assessment period the amount of unearned income for that assessment period is to be calculated as follows:

$$N \times \left[ \frac{M \times 12}{365} \right]$$

Where N is the number of days of which unearned income is paid that fall within the assessment period and M the monthly amount referred to in paragraph (1) or, as the case may be the monthly equivalent referred to in paragraph (2).

(4) Where the amount of a person's unearned income fluctuates, the monthly equivalent is to be calculated—

- (a) where there is an identifiable cycle, over the duration of one such cycle, or
- (b) where there is no identifiable cycle, over 3 months or such other period as may, in the particular case, enable the monthly equivalent of the person's income to be determined more accurately.

(5) This regulation does not apply to student income.

### Notional unearned income

**74.**—(1) If unearned income would be available to a person upon the making of an application for it, the person is to be treated as having that unearned income.

(2) Paragraph (1) does not apply to the benefits listed in regulation 66(1)(b).

(3) A person who has reached the qualifying age for state pension credit is to be treated as possessing the amount of any retirement pension income for which no application has been made and to which the person might expect to be entitled if a claim were made.

(4) The circumstances in which a person is to be treated as possessing retirement pension income for the purposes of universal credit are the same as the circumstances set out in regulation 18 of the State Pension Credit Regulations (Northern Ireland) 2003(65) in which a person is treated as receiving retirement pension income for the purposes of state pension credit.

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(65) Regulation 18 was amended by regulation 14(4) of S.R. 2006 No. 359, regulation 8(3) of S.R. 2007 No. 396, regulation 5(4) of S.R. 2009 No. 338 and regulation 6(6) of S.R. 2010 No. 69.

## CHAPTER 4 MISCELLANEOUS

### **Compensation for personal injury**

75.—(1) This regulation applies where a sum has been awarded to a person, or has been agreed by or on behalf of a person, in consequence of a personal injury to that person.

(2) If, in accordance with an order of the court or an agreement, the person receives all or part of that sum by way of regular payments, those payments are to be disregarded in the calculation of the person's unearned income.

(3) If the sum has been used to purchase an annuity, payments under the annuity are to be disregarded in the calculation of the person's unearned income.

(4) If the sum is held in trust, any capital of the trust derived from that sum is to be disregarded in the calculation of the person's capital and any income from the trust is to be disregarded in the calculation of the person's unearned income.

(5) If the sum is administered by the court on behalf of the person or can only be disposed of by direction of the court, it is to be disregarded in the calculation of the person's capital and any regular payments from that amount are to be disregarded from the calculation of the person's unearned income.

(6) If the sum is not held in trust or has not been used to purchase an annuity or otherwise disposed of, but has been paid to the person within the past 12 months that sum is to be disregarded in the calculation of the person's capital.

### **Special schemes for compensation etc.**

76.—(1) This regulation applies where a person receives a payment from a scheme established or approved by the Secretary of State or from a trust established with funds provided by the Secretary of State for the purpose of—

(a) providing compensation in respect of—

(i) a person having been diagnosed with variant Creutzfeldt-Jacob disease or infected from contaminated blood products,

(ii) the bombings in London on 7th July 2005,

(iii) person's who have been interned or suffered forced labour, injury, property loss or loss of a child during the Second World War, or

(b) supporting persons with a disability to live independently in their accommodation.

(2) Any such payment, if it is capital, is to be disregarded in the calculation of the person's capital and, if it is income, is to be disregarded in the calculation of the person's income.

(3) In relation to a claim for universal credit made by the partner, parent, son or daughter of a diagnosed or infected person referred to in paragraph (1)(a)(i) a payment received from the scheme or trust or from the diagnosed or infected person or from that person's estate is to be disregarded if it would be disregarded in relation to an award of state pension credit by virtue of paragraph 13 or 15 of Schedule 5 to the State Pension Credit Regulations (Northern Ireland) 2003.

### **Company analogous to a partnership or one person business**

77.—(1) Where a person stands in a position analogous to that of a sole owner or partner in relation to a company which is carrying on a trade or a property business, the person is to be treated, for the purposes of this Part, as the sole owner or partner.

(2) Where paragraph (1) applies, the person is to be treated, subject to paragraph (3)(a), as possessing an amount of capital equal to the value, or the person's share of the value, of the capital of the company and the value of the person's holding in the company is to be disregarded.

(3) Where paragraph (1) applies in relation to a company which is carrying on a trade—

- (a) any assets of the company that are used wholly and exclusively for the purposes of the trade are to be disregarded from the person's capital while they are engaged in activities in the course of that trade,
- (b) the income of the company or the person's share of that income is to be treated as the person's income and calculated in the manner set out in regulation 57 (self-employed earnings) as if it were self-employed earnings, and
- (c) where the person's activities in the course of the trade are their main employment, the person is to be treated as if they were in gainful self employment and, accordingly, regulation 63 (minimum income floor) applies.

(4) Any self-employed earnings which the person is treated as having by virtue of paragraph (3) (b) are in addition to any employed earnings the person receives as a director or employee of the company.

(5) This regulation does not apply where the person derives income from the company that is employed earnings by virtue of Chapter 8 (workers under arrangements made by intermediaries) or Chapter 9 (managed service companies) of Part 2 of the ITEPA Act.

(6) In paragraph (1) "property business" has the meaning in section 204 of the Corporation Tax Act 2009<sup>(66)</sup>.

## PART 7

### THE BENEFIT CAP

#### Definition of Couple

**78.** In this Part "couple" means—

- (a) joint claimants, or
- (b) a single claimant who is a member of a couple within the meaning of Article 45 of the Order and the other member of that couple,

and references to a couple include each member of that couple individually.

#### Circumstances where the benefit cap applies

**79.**—(1) Unless regulation 82 or 83 applies, the benefit cap applies where the welfare benefits to which a single person or couple is entitled during the reference period exceed the relevant amount.

(2) The reference period for the purposes of the benefit cap is the assessment period for an award of universal credit.

(3) The "relevant amount" is—

- (a) £2167 for joint claimants or a single claimant who is responsible for a child or qualifying young person, or
- (b) £1517 for a single claimant who is not responsible for a child or qualifying young person.

(4) The welfare benefits referred to in paragraph (1) are—

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<sup>(66)</sup> 2009 c. 4.

- (a) bereavement allowance;
- (b) child benefit under section 137 of the Contributions and Benefits Act;
- (c) employment and support allowance;
- (d) jobseeker's allowance;
- (e) maternity allowance;
- (f) universal credit;
- (g) widowed mother's allowance;
- (h) widowed parent's allowance;
- (i) widow's pension.

### **Manner of determining total entitlement to welfare benefits**

**80.**—(1) Subject to the following provisions of this regulation, the amount of a welfare benefit to be used when determining total entitlement to welfare benefits is the amount to which the single person or couple is entitled during the reference period subject to any adjustment to the amount payable in accordance with regulations under section 71 of the Social Security Administration (Northern Ireland) 1992 (overlapping benefits).

(2) Where the welfare benefit is universal credit, the amount to be used is the amount to which the claimant is entitled before any reduction under regulation 81 or under Article 31 or 32 of the Order.

(3) Where a person is disqualified for receiving an employment and support allowance by virtue of section 18 of the Welfare Reform Act (Northern Ireland) 2007, it is disregarded as a welfare benefit.

(4) Where an amount of a welfare benefit is taken into account in assessing a single person or a couple's unearned income for the purposes of an award of universal credit the amount to be used is the amount taken into account as unearned income in accordance with regulation 66.

(5) Where a welfare benefit is awarded in respect of a period that is not a month, the amount is to be calculated as the monthly equivalent as set out in regulation 73 (unearned income calculated monthly).

### **Reduction of universal credit**

**81.**—(1) Where the benefit cap applies in relation to an assessment period for an award of universal credit, the amount of the award for that period is to be reduced by—

- (a) the excess, minus
- (b) any amount included in the award for the childcare costs element in relation to that assessment period.

(2) No reduction is to be applied where the amount of the childcare costs element is greater than the excess.

(3) The excess is the total amount of welfare benefits that the single person or the couple are entitled to in the reference period, minus the relevant amount applicable under regulation 79(3) (circumstances where the benefit cap applies).

### **Exceptions - earnings**

**82.**—(1) The benefit cap does not apply to an award of universal credit in relation to an assessment period where—

- (a) the claimant's earned income, or if the claimant is a member of a couple, the couple's combined earned income, is equal to or exceeds £430; or

- (b) the assessment period falls within a grace period or is an assessment period in which a grace period begins or ends.
- (2) A grace period is a period of 9 consecutive months that begins on the most recent of the following days in respect of which the condition in paragraph (3) is met—
- (a) a day falling within the current period of entitlement to universal credit which is the first day of an assessment period in which the claimant's earned income (or, if the claimant is a member of a couple, the couple's combined earned income) is less than the amount mentioned in paragraph (1)(a);
- (b) a day falling before the current period of entitlement to universal credit which is the day after a day on which the claimant has ceased paid work.
- (3) The condition is that, in each of the 12 months immediately preceding that day, the claimant's earned income or, if the claimant was a member of a couple, the couple's combined earned income was equal to or exceeded the amount mentioned in paragraph (1)(a).
- (4) "Earned income" for the purposes of this regulation does not include income a person is treated as having by virtue of regulation 63 (minimum income floor).

### Exceptions - entitlement or receipt of certain benefits

- 83.**—(1) The benefit cap does not apply in relation to any assessment period where—
- (a) the LCWRA element is included in the award of universal credit or the claimant is receiving an employment and support allowance that includes the support component;
- (b) the carer element is included in the award of universal credit;
- (c) a claimant is receiving industrial injuries benefit;
- (d) a claimant is receiving attendance allowance;
- (e) a claimant is receiving a war pension;
- (f) a claimant is receiving a payment under Article 15(1)(c) or 29(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(**67**);
- (g) a claimant, or a child or qualifying young person for whom a claimant is responsible, is receiving disability living allowance;
- (h) a claimant, or a qualifying young person for whom a claimant is responsible, is receiving personal independence payment;
- (i) a claimant, or a child or qualifying young person for whom a claimant is responsible, is entitled to a payment listed in sub-paragraphs (b) to (g) but—
- (i) is not receiving it by virtue of regulation 6 (hospitalisation) or regulation 7 (persons in care homes) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(**68**),
- (ii) it is being withheld by virtue of Article 53 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(**69**) (maintenance in a hospital or institution),
- (iii) is not receiving it by virtue of regulation 8 (hospitalisation) or 9 (persons in care homes) of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(**70**), or

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(67) S.I. 2011/517.

(68) S.R. 1992 No. 20; regulation 6 was amended by regulation 2 of S.R. 1992 No. 481, regulation 3 of S.R. 1999 No. 221, regulation 2(3) of S.R. 2000 No. 195; regulation 7 was amended by regulation 2(2) of S.R. 2007 No. 431.

(69) S.I. 2006/606.

(70) S.R. 1992 No. 32; regulation 8 was amended by regulation 3(2) of S.R. 1992 No. 481, regulation 4(2) of S.R. 1999 No. 221, regulation 3(2) of S.R. 2000 No. 195; regulation 9 was amended by regulation 3(2) of S.R. 2007 No. 431.

- (iv) in the case of personal independence payment, is not receiving it by virtue of regulations under Article 90 (care home residents) or 91 (hospital in-patients) of the Order;
  - (j) a claimant is entitled to a carer's allowance;
  - (k) a claimant is entitled to guardian's allowance under section 77 of the Contributions and Benefits Act.
- (2) For the purposes of this regulation "war pension" means—
- (a) any pension or allowance payable under any of the instruments listed in section 639(2) of the ITEPA Act—
    - (i) to a widow, widower or a surviving civil partner, or
    - (ii) in respect of disablement;
  - (b) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under a statutory provision to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of Her Majesty's forces;
  - (c) a payment which is made under any of—
    - (i) the Order in Council of 19th December 1881,
    - (ii) the Royal Warrant of 27th October 1884, or
    - (iii) the Order by His Majesty of 14th January 1922,to a widow, widower or surviving civil partner of a person whose death was attributable to service in a capacity analogous to service as a member of Her Majesty's forces and whose service in such capacity terminated before 31st March 1973;
  - (d) a pension paid by the government of a country outside the United Kingdom which is analogous to any of the pensions, allowances or payments mentioned in sub-paragraphs (a) to (c).

## PART 8

### CLAIMANT RESPONSIBILITIES

#### CHAPTER 1

#### WORK-RELATED REQUIREMENTS

##### *Introductory*

##### **Definition of carer**

**84.** In this Chapter—

"relevant carer" means—

- (a) a parent of a child who is not the responsible carer, but has caring responsibilities for the child, or
- (b) a person who has caring responsibilities for a person who has a physical or mental impairment; and

“responsible foster parent” in relation to a child means a person who is the only foster parent in relation to that child or, in the case of a couple both members of which are foster parents in relation to that child, the member who is nominated by them in accordance with regulation 85.

#### **Nomination of responsible carer and responsible foster parent**

**85.**—(1) This regulation makes provision for the nomination of the responsible carer or the responsible foster parent in relation to a child.

(2) Only one of joint claimants may be nominated as a responsible carer or a responsible foster parent.

(3) The nomination applies to all the children, where there is more than one, for whom either of the joint claimants is responsible.

(4) Joint claimants may change which member is nominated—

- (a) once in a 12 month period, starting from the date of the previous nomination, or
- (b) on any occasion where the Department considers that there has been a change of circumstances which is relevant to the nomination.

#### **References to paid work**

**86.** References in this Chapter to obtaining paid work include obtaining more paid work or better paid work.

#### **Expected hours**

**87.**—(1) The “expected number of hours per week” in relation to a claimant for the purposes of determining their individual threshold in regulation 89 or for the purposes of regulation 93 or 95 is 35 unless some lesser number of hours applies under paragraph (2).

(2) The lesser number of hours is—

- (a) where—
  - (i) the claimant is a relevant carer, a responsible carer or a responsible foster parent, and
  - (ii) the Department is satisfied that the claimant has reasonable prospects of obtaining paid work,
 the number of hours that the Department considers is compatible with those caring responsibilities;
- (b) where the claimant is a responsible carer for a child under the age of 13, the number of hours that the Department considers is compatible with the child’s normal school hours (including the normal time it takes the child to travel to and from school), or
- (c) where the claimant has a physical or mental impairment, the number of hours that the Department considers is reasonable in light of the impairment.

#### *Work-related groups*

#### **Claimants subject to no work-related requirements**

**88.**—(1) A claimant falls within Article 24 of the Order (claimants subject to no work-related requirements) if—

- (a) the claimant has reached the qualifying age for state pension credit;

- (b) the claimant has caring responsibilities for one or more severely disabled persons for at least 35 hours a week but does not meet the conditions for entitlement to a carer's allowance and the Department is satisfied that it would be unreasonable to require the claimant to comply with a work search requirement and a work availability requirement, including if such a requirement were limited in accordance with Article 22(4) or 23(3) of the Order,
  - (c) the claimant is pregnant and it is 11 weeks or less before her expected week of confinement or was pregnant and it is 15 weeks or less since the date of her confinement,
  - (d) the claimant is an adopter and it is 12 months or less since—
    - (i) the date that the child was placed with the claimant, or
    - (ii) if the claimant requested that the 12 months should run from a date within 14 days before the child was expected to be placed, that date,
  - (e) the claimant does not have to meet the condition in Article 9(1)(d) of the Order (not receiving education) by virtue of regulation 14 and—
    - (i) is a person referred to in paragraph (a) of that regulation (under 21, in non-advanced education and without parental support), or
    - (ii) has student income in relation to the course they are undertaking which is taken into account in the calculation of the award, or
  - (f) the claimant is the responsible foster parent of a child under the age of one.
- (2) In paragraph (1)(b) “severely disabled” has the meaning in section 70 of the Contributions and Benefits Act.
- (3) In paragraph (1)(d)—
- (a) “adopter” means a person who has been matched with a child for adoption and who is, or is intended to be, the responsible carer for the child, but excluding a person who is a foster parent, or close relative of the child, and
  - (b) a person is matched with a child for adoption when it is decided by an adoption agency that the person would be a suitable adoptive parent for the child.

### **Claimants subject to no work-related requirements - the earnings thresholds**

**89.**—(1) A claimant falls within Article 24 of the Order (claimants subject to no work-related requirements) if the claimant's monthly earnings are equal to or exceed the claimant's individual threshold.

(2) A claimant's individual threshold is the amount that a person of the same age as the claimant would be paid at the hourly rate applicable under regulation 4 or regulation 4A(1)(a) to (c) (workers who qualify for the national minimum wage at a different rate) of the National Minimum Wage Regulations for—

- (a) 16 hours per week, in the case of a claimant who would otherwise fall within Article 25 (claimants subject to work-focused interview requirement only) or 26 (claimants subject to work preparation requirement) of the Order, or
- (b) the expected number of hours per week in the case of a claimant who would otherwise fall within Article 27 of the Order (claimants subject to all work-related requirements),

converted to a monthly amount by multiplying by 52 and dividing by 12.

(3) A claimant who is a member of a couple falls within Article 24 of the Order if the couple's combined monthly earnings are equal to or exceed whichever of the following amounts is applicable

- (a) in the case of joint claimants, the sum of their individual thresholds, or

- (b) in the case of a claimant who claims universal credit as a single person, by virtue of regulation 3(2) (couples) the sum of—
    - (i) the claimant’s individual threshold, and
    - (ii) the amount a person would be paid for 35 hours per week at the hourly rate specified in regulation 4 of the National Minimum Wage Regulations, converted to a monthly amount by multiplying by 52 and dividing by 12.
  - (4) A claimant falls within Article 24 of the Order (claimants subject to no work-related requirements) if the claimant is employed under a contract of apprenticeship and has monthly earnings that are equal to or exceed the amount the claimant would be paid for—
    - (a) 30 hours a week, or
    - (b) if less, the expected number of hours per week for that claimant, at the rate specified in regulation 4A(a)(d) of the National Minimum Wage Regulations, converted to a monthly amount by multiplying by 52 and dividing by 12.
  - (5) A claimant falls within Article 24 of the Order if the claimant is treated as having earned income in accordance with regulation 63 (minimum income floor) .
  - (6) A person’s monthly earnings are—
    - (a) the person’s earned income calculated or estimated in relation to the current assessment period before any deduction for income tax, national insurance contributions or relievable pension contributions, or
    - (b) in a case where the person’s earned income fluctuates (or is likely to fluctuate) the amount of that income calculated or estimated before any deduction for income tax, national insurance contributions or relievable pension contributions, taken as a monthly average—
      - (i) where there is an identifiable cycle, over the duration of one such cycle, or
      - (ii) where there is no identifiable cycle, over 3 months or such other period as may, in the particular case, enable the monthly average to be determined more accurately.
- and the Department may, in order to enable monthly earnings to be determined more accurately, disregard earned income received in respect of an employment which has ceased.

#### **Claimants subject to work-focused interview requirement only**

- 90.**—(1) For the purposes of Article 25(1)(a) of the Order (claimant is the responsible carer for a child aged at least one and under a prescribed age) the prescribed age is 5.
- (2) A claimant falls within Article 25 of the Order if—
    - (a) the claimant is the responsible foster parent in relation to a child aged at least one,
    - (b) the claimant is the responsible foster parent in relation to a qualifying young person, and the Department is satisfied that the qualifying young person has care needs which make it unreasonable to require the claimant to comply with a work search requirement or a work availability requirement, including if such a requirement were limited in accordance with Article 22(4) or 23(3) of the Order,
    - (c) the claimant is a foster parent, but not the responsible foster parent, in relation to a child or qualifying young person, and the Department is satisfied that the child or qualifying young person has care needs which would make it unreasonable to require the claimant to comply with a work search requirement or a work availability requirement, including if such a requirement were limited in accordance with Article 22(4) or 23(3) of the Order,
    - (d) the claimant has fallen within sub-paragraph (a), (b) or (c) within the past 8 weeks and has no child or qualifying young person currently placed with them, but expects to resume being a foster parent, or

- (e) the claimant has become a friend or family carer in relation to a child within the past 12 months and is also the responsible carer in relation to that child.
- (3) In paragraph (2)(e) “friend or family carer” means a person who is responsible for a child, but is not the child’s parent or step-parent, and has undertaken the care of the child in the following circumstances—
- (a) the child has no parent or has parents who are unable to care for the child, or
  - (b) it is likely that the child would otherwise be looked after by an authority because of concerns in relation to the child’s welfare.

### *The work-related requirements*

#### **Purposes of a work-focused interview**

- 91.** The purposes of a work-focused interview are any or all of the following—
- (a) assessing the claimant’s prospects for remaining in or obtaining paid work;
  - (b) assisting or encouraging the claimant to remain in or obtain paid work;
  - (c) identifying activities that the claimant may undertake that will make remaining in or obtaining paid work more likely;
  - (d) identifying training, educational or rehabilitation opportunities for the claimant which may make it more likely that the claimant will remain in or obtain paid work or be able to do so;
  - (e) identifying current or future work opportunities for the claimant that are relevant to the claimant’s needs and abilities;
  - (f) ascertaining whether a claimant is in gainful self-employment or meets the conditions in regulation 64 (start-up period).

#### **Work search requirement - interviews**

**92.** A claimant is to be treated as not having complied with a work search requirement to apply for a particular vacancy for paid work where the claimant fails to participate in an interview offered to the claimant in connection with the vacancy.

#### **Work search requirement - all reasonable action**

- 93.—(1)** A claimant is to be treated as not having complied with a work search requirement to take all reasonable action for the purpose of obtaining paid work in any week unless—
- (a) either—
    - (i) the time which the claimant spends taking action for the purpose of obtaining paid work is at least the claimant’s expected number of hours per week minus any relevant deductions, or
    - (ii) the Department is satisfied that the claimant has taken all reasonable action for the purpose of obtaining paid work despite the number of hours that the claimant spends taking such action being lower than the expected number of hours per week; and
  - (b) that action gives the claimant the best prospects of obtaining work.
- (2) In this regulation “relevant deductions” means the total of any time agreed by the Department —
- (a) for the claimant to carry out paid work, voluntary work, a work preparation requirement, or voluntary work preparation, in that week; or

(b) for the claimant to deal with temporary childcare responsibilities, a domestic emergency, funeral arrangements or other temporary circumstances.

(3) For the purpose of paragraph (2)(a) the time agreed by the Department for the claimant to carry out voluntary work must not exceed 50 percent of the claimant's expected number of hours per week.

(4) "Voluntary work preparation" means particular action taken by a claimant and agreed by the Department for the purpose of making it more likely that the claimant will obtain paid work, but which is not specified by it as a work preparation requirement under Article 21 of the Order.

### **Work availability requirement - able and willing immediately to take up paid work**

**94.**—(1) Subject to paragraph (2) a claimant is to be treated as not having complied with a work availability requirement if the claimant is not able and willing immediately to attend an interview offered to the claimant in connection with obtaining paid work.

(2) A claimant is to be treated as having complied with a work availability requirement despite not being able immediately to take up paid work, if paragraph (3), (4) or (5) applies.

(3) This paragraph applies where—

- (a) a claimant is a responsible carer or a relevant carer,
- (b) the Department is satisfied that, as a consequence the claimant needs a longer period of up to one month to take up paid work, or up to 48 hours to attend an interview in connection with obtaining work, taking into account alternative care arrangements, and
- (c) the claimant is able and willing to take up paid work, or attend an interview, on being given notice for that period.

(4) This paragraph applies where—

- (a) a claimant is carrying out voluntary work,
- (b) the Department is satisfied that, as a consequence, the claimant needs a longer period of up to one week to take up paid work, or up to 48 hours to attend an interview in connection with obtaining work, and
- (c) the claimant is able and willing to take up paid work, or attend an interview, on being given notice for that period.

(5) This paragraph applies where a claimant—

- (a) is employed under a contract of service,
- (b) is required by Article 118 of the Employment Rights (Northern Ireland) Order 1996(71), or by the contract of service, to give notice to terminate the contract,
- (c) is able and willing to take up paid work once the notice period has expired, and
- (d) is able and willing to attend an interview on being given 48 hours notice.

### **Work search requirement and work availability requirement - limitations**

**95.**—(1) Paragraphs (2) to (5) set out the limitations on a work search requirement and a work availability requirement.

(2) In the case of a claimant who is a relevant carer or a responsible carer or who has a physical or mental impairment, a work search and work availability requirement must be limited to the number of hours that is determined to be the claimant's expected number of hours per week in accordance with regulation 87.

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(71) [S.I. 1996/1919 \(N.I. 16\)](#); Article 118 was amended by paragraph 2(5) of Schedule 2 to, [S.R. 2002 No. 298](#).

(3) A work search and work availability requirement must be limited to work that is in a location which would normally take the claimant—

- (a) a maximum of 90 minutes to travel from home to the location, and
- (b) a maximum of 90 minutes to travel from the location to home.

(4) Where a claimant has previously carried out work of a particular nature, or at a particular level of remuneration, a work search requirement and a work availability requirement must be limited to work of a similar nature, or level of remuneration, for such period as the Department considers appropriate; but only if it is satisfied that the claimant will have reasonable prospects of obtaining paid work in spite of such limitation.

(5) The limitation in paragraph (4) is to apply for no more than 3 months beginning with—

- (a) the date of claim, or
- (b) if later, the date on which the claimant ceases paid work after falling within Article 24 of the Order by virtue of regulation 89 (claimants subject to no work-related requirements - the earnings thresholds).

(6) Where a claimant has a physical or mental impairment that has a substantial adverse effect on the claimant's ability to carry out work of a particular nature, or in particular locations, a work search or work availability requirement must not relate to work of such a nature or in such locations.

#### **Victims of domestic violence**

**96.**—(1) Where a claimant has recently been a victim of domestic violence, and the circumstances set out in paragraph (4) apply—

- (a) a work-related requirement imposed on that claimant ceases to have effect for a period of 13 consecutive weeks starting on the date of the notification referred to in paragraph (4) (a), and
- (b) the Department must not impose any other work-related requirement on that claimant during that period.

(2) Where a claimant referred to in paragraph (1) is a person who falls within Article 27 of the Order (claimants subject to all work-related requirements) and is the responsible carer of a child, the Department must not impose a work search requirement or a work availability requirement on that claimant for a further period of 13 consecutive weeks beginning on the day after the period in paragraph (1)(a) expires.

(3) A person has recently been a victim of domestic violence if a period of 6 months has not expired since the violence was inflicted or threatened.

(4) The circumstances are that—

- (a) the claimant notifies the Department, in such manner as it specifies, that domestic violence has been inflicted on or threatened against the claimant by the claimant's partner or former partner or by a family member during the period of 6 months ending on the date of the notification,
- (b) this regulation has not applied to the claimant for a period of 12 months before the date of the notification,
- (c) on the date of the notification the claimant is not living at the same address as the person who inflicted or threatened the domestic violence, and
- (d) as soon as possible, and no later than one month after the date of the notification, the claimant provides evidence from a person acting in an official capacity which demonstrates that—

- (i) the claimant’s circumstances are consistent with those of a person who has had domestic violence inflicted or threatened against them during the period of 6 months ending on the date of the notification, and
- (ii) the claimant has made contact with the person acting in an official capacity in relation to such an incident, which occurred during that period.

(5) In this regulation—

“coercive behaviour” means an act of assault, humiliation or intimidation or other abuse that is used to harm, punish or frighten the victim;

“controlling behaviour” means an act designed to make a person subordinate or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance or escape or regulating their everyday behaviour;

“domestic violence” means any incident, or pattern of incidents, of controlling behaviour, coercive behaviour, violence or abuse, including but not limited to—

- (a) psychological abuse;
- (b) physical abuse;
- (c) sexual abuse;
- (d) emotional abuse;
- (e) financial abuse,

regardless of gender or sexuality of the victim;

“family member” in relation to a claimant, means the claimant’s grandparent, grandchild, parent, step-parent, parent-in-law, son, step-son, son-in-law, daughter, step-daughter, daughter-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law and if any of those persons is a member of a couple, the other member of the couple;

“health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002<sup>(72)</sup>;

“person acting in an official capacity” means a health care professional, a police officer, a registered social worker, the claimant’s employer, a representative of the claimant’s trade union, or any public, voluntary or charitable body which has had direct contact with the claimant in connection with domestic violence;

“registered social worker” means a person registered as a social worker in a register maintained by—

- (a) the Northern Ireland Social Care Council<sup>(73)</sup>;
- (b) the Health and Care Professions Council;
- (c) the Care Council for Wales, or
- (d) the Scottish Social Services Council.

### **Circumstances in which requirements must not be imposed**

97.—(1) Where paragraph (6), (7), (8) or (14) applies—

- (a) the Department must not impose a work search requirement on a claimant, and

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<sup>(72)</sup> 2002 c. 17; section 25(3) was amended by the Health and Social Care Act 2008 (c. 14) and S.I. 2010/231.

<sup>(73)</sup> The Northern Ireland Social Care Council was established under section 1 of the Health and Personal Services Act (Northern Ireland) 2001 c.3. (NI).

- (b) “able and willing to immediately take up work” under a work availability requirement means able and willing to take up paid work, or attend an interview, immediately once the circumstances set out in paragraph (6), (7), (8), or (14) no longer apply.
- (2) A work search requirement previously applying to the claimant ceases to have effect from the date on which the circumstances set out in paragraph (6), (7), (8), or (14) begin to apply.
- (3) Where paragraph (11) applies—
  - (a) the Department must not impose a work search requirement on a claimant, and
  - (b) a work search requirement previously applying to the claimant ceases to have effect from the date on which the circumstances set out in paragraph (11) begin to apply.
- (4) Where paragraph (12) applies “able and willing to immediately take up work” under a work availability requirement means able and willing to take up paid work or to attend an interview, immediately once the circumstances set out in paragraph (12) no longer apply.
- (5) Where paragraph (13) applies “able and willing to immediately take up work” under a work availability requirement means—
  - (a) able and willing to take up paid work immediately once the circumstances set out in paragraph (13) no longer apply, and
  - (b) able and willing to attend an interview before those circumstances no longer apply.
- (6) This paragraph applies where—
  - (a) the claimant is attending court or tribunal as a party to any proceedings or as a witness,
  - (b) the claimant is a prisoner,
  - (c) regulation 11(3) (temporary absence from Northern Ireland for treatment or convalescence) applies to the claimant,
  - (d) any of the following persons has died within the past 6 months—
    - (i) where the claimant was a member of a couple, the other member,
    - (ii) a child or qualifying young person for whom the claimant or, where the claimant is a member of a couple, the other member, was responsible, or
    - (iii) a child, where the claimant was the child’s parent,
  - (e) the claimant is, and has been for no more than 6 months, receiving and participating in a structured recovery-orientated course of alcohol or drug dependency treatment,
  - (f) the claimant is, and has been for no more than 3 months, a person for whom arrangements have been made by a protection provider under section 82 of the Serious Organised Crime and Police Act 2005(74), or
  - (g) the claimant is engaged in an activity of a kind approved by the Department as being in the nature of a public duty.
- (7) This paragraph applies where the claimant—
  - (a) is unfit for work—
    - (i) for a period of no more than 14 consecutive days after the date that the evidence referred to in sub-paragraph (b) is provided, and
    - (ii) for no more than 2 such periods in any period of 12 months, and
  - (b) provides to the Department the following evidence—
    - (i) for the first 7 days when they are unfit for work, a declaration made by the claimant in such manner and form as the Department approves that the claimant is unfit for work, and

- (ii) for any further days when they are unfit for work, if requested by the Department, a statement given by a doctor in accordance with the rules set out in Part 1 of Schedule 1 to the Medical Evidence Regulations()which provides that the person is not fit for work.

(8) This paragraph applies for one or more periods of one month, as provided for in paragraphs (9) and (10), where the claimant is the responsible carer of a child and an event referred to in subparagraph (a) or (b) has taken place in the last 24 months and has resulted in significant disruption to the claimant's normal childcare responsibilities-

- (a) any of the following persons has died-
  - (i) a person who was previously the responsible carer of that child,
  - (ii) a parent of that child,
  - (iii) a brother or sister of that child, or
  - (iv) any other person who, at the time of their death, normally lived in the same accommodation as that child and was not a person who was liable to make payments on a commercial basis in respect of that accommodation, or
- (b) the child has been the victim of, or witness to, an incident of violence or abuse and the claimant is not the perpetrator of that violence or abuse.

(9) Paragraph (8) is not to apply for more than one period of one month in each of the 4 consecutive periods of 6 months following the event (and, if regulation 96 or paragraph (6)(d) of this regulation applies in respect of the same event, that month is to run concurrently with any period for which that regulation or paragraph applies).

(10) Each period of one month begins on the date specified by the Department after the claimant has notified it of the circumstances in paragraph (8) provided that it is satisfied that the circumstances apply.

(11) This paragraph applies where the Department is satisfied that it would be unreasonable to require the claimant to comply with a work search requirement including if such a requirement were limited in accordance with Article 22(4) of the Order, because the claimant—

- (a) is carrying out a work preparation requirement or voluntary work preparation (as defined in regulation 93(4) (work search requirement – all reasonable action)),
- (b) has temporary child care responsibilities or is dealing with a domestic emergency, funeral arrangements or other temporary circumstances, or
- (c) is unfit for work for longer than the period of 14 days specified in paragraph (7)(a) or for more than 2 such periods in any period of 12 months and, where requested by the Department, provides the evidence mentioned in paragraph (7)(b)(ii).

(12) This paragraph applies where the Department is satisfied that it would be unreasonable to require the claimant to comply with a work availability requirement to be able and willing to—

- (a) take up paid work, and
  - (b) attend an interview,
- (including if such a requirement were limited in accordance with Article 23(3) of the Order) because the claimant falls within sub-paragraph (a), (b) or (c) of paragraph (11).

(13) This paragraph applies where the Department is satisfied that it would be—

- (a) unreasonable to require the claimant to comply with a work availability requirement to be able and willing to take up paid work because the claimant falls within paragraph (11) (a), (b) or (c), and
- (b) reasonable to require the claimant to comply with a work availability requirement to be able and willing to attend an interview,

including if such requirement were limited in accordance with Article 23(3) of the Order.

(14) This paragraph applies where the claimant has monthly earnings or, if the claimant is a member of a couple, the couple has combined monthly earnings (excluding in either case any that are not employed earnings) that are equal to, or more than, the following amount multiplied by 52 and divided by 12—

- (a) in the case of a single claimant, £5 plus the applicable amount of the personal allowance in a jobseeker’s allowance for a single person aged 25 or over (as set out in Part 1 of Schedule 1 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996<sup>(75)</sup>), or
- (b) in the case of a claimant who is a member of a couple, £10 plus the applicable amount of the personal allowance in a jobseeker’s allowance for a couple where both members are aged 18 or over (as set out in that Part).

(15) In paragraph (14) “employed earnings” has the meaning in regulation 55 (employed earnings).

(16) In this regulation “tribunal” means any tribunal listed in Schedule 1 to the Tribunals and Inquiries Act 1992<sup>(76)</sup>.

## CHAPTER 2

### SANCTIONS

#### *Reduction periods*

#### **General principles for calculating reduction periods**

**98.**—(1) The number of days for which a reduction in the amount of an award is to have effect (“the reduction period”) is to be determined in relation to each sanctionable failure in accordance with regulations 99 to 102, subject to paragraphs (3) and (4).

(2) Reduction periods are to run consecutively.

(3) If the reduction period calculated in relation to a sanctionable failure in accordance with regulations 100 to 102 would result in the total outstanding reduction period exceeding 546 days, the reduction period in relation to that failure is to be adjusted so that the total outstanding reduction period does not exceed 546 days.

(4) In determining the reduction period in relation to a sanctionable failure, a previous sanctionable failure is disregarded if it occurred in the 13 days immediately preceding the failure in question.

(5) In paragraph (3) “the total outstanding reduction period” is the total number of days for which no reduction in an award under Article 31 (higher-level sanctions) or 32 (other sanctions) of the Order has yet been applied.

#### **Higher-level sanctions**

**99.**—(1) This regulation specifies the reduction period for a sanctionable failure under Article 31 of the Order (higher-level sanctions).

(2) Where the sanctionable failure is not a pre-claim failure, the reduction period is—

- (a) where the claimant is aged 18 or over on the date of the sanctionable failure—
  - (i) 91 days, if paragraphs (ii) and (iii) do not apply,

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<sup>(75)</sup> S.R.1996 No. 198.

<sup>(76)</sup> 1992 c. 53.

- (ii) 182 days, if there was another sanctionable failure giving rise to a higher-level sanction in the 364 days preceding the failure in question for which a 91 day reduction period applies, or
- (iii) 546 days, if there was another sanctionable failure giving rise to a higher-level sanction in that period of 364 days for which a 182 day or 546 day reduction period applies, or

where the claimant is aged 16 or 17 on the date of the sanctionable failure—

- (i) 14 days, if paragraph (ii) does not apply, or
- (ii) 28 days, if there was another sanctionable failure giving rise to a higher-level sanction in the 364 days preceding the failure in question for which a 14 day or 28 day reduction period applies.
- (3) Where the other sanctionable failure referred to in paragraph (2) was a “pre-claim failure” it is disregarded in determining the reduction period in accordance with that paragraph.
- (4) Where the sanctionable failure for which a reduction period is to be determined is a pre-claim failure, the period is the lesser of—
  - (a) the period that would be applicable to the claimant under paragraph (2) if it were not a pre-claim failure, or
  - (b) where the sanctionable failure relates to paid work that was due to last for a limited period, the period beginning with the day after the date of the sanctionable failure and ending with the date on which the limited period would have ended,

minus the number of days beginning with the day after the date of the sanctionable failure and ending on the day before the date of claim.

(5) In this regulation, “pre-claim failure” means a failure sanctionable under section 31(4) of the Order.

### **Medium-level sanction**

**100.**—(1) This regulation specifies the reduction period for a sanctionable failure under Article 32 of the Order (other sanctions) where it is a failure by the claimant to comply with—

- (a) a work search requirement under Article 22(1)(a) (to take all reasonable action to obtain paid work etc.), or
- (b) a work availability requirement under Article 23(1).
- (2) The reduction period is—
  - (a) where the claimant is aged 18 or over on the date of the sanctionable failure—
    - (i) 28 days, if paragraph (ii) doesn’t apply, or
    - (ii) 91 days, if there was another sanctionable failure of a kind mentioned in paragraph (1) in the 364 days preceding the failure in question for which a 28 day or 91 day reduction period applies, or
  - (b) where the claimant is aged 16 or 17 on the date of the sanctionable failure—
    - (i) 7 days, if paragraph (ii) doesn’t apply, or
    - (ii) 14 days, if there was another sanctionable failure of a kind mentioned in paragraph (1) in the 364 days preceding the failure in question, for which a 7 day or 14 day reduction period applies.

## Low-level sanction

**101.**—(1) This regulation specifies the reduction period for a sanctionable failure under Article 32 of the Order (other sanctions) where—

- (a) the claimant falls within Article 26 (claimants subject to work preparation requirement) or 27 (claimants subject to all work-related requirements) of the Order on the date of that failure; and
- (b) it is a failure to comply with—
  - (i) a work-focused interview requirement under Article 20(1),
  - (ii) a work preparation requirement under Article 21(1),
  - (iii) a work search requirement under Article 22(1)(b) (to take any particular action specified by the Department to obtain paid work etc.), or
  - (iv) a requirement under Article 28(1), (3) or (4) (connected requirements: interviews and verification of compliance).

(2) Where the claimant is aged 18 or over on the date of the sanctionable failure, the reduction period is the total of—

- (a) the number of days beginning with the date of the sanctionable failure and ending with—
  - (i) the day before the date on which the claimant meets a compliance condition specified by the Department,
  - (ii) the day before the date on which the claimant falls within Article 24 of the Order (claimants subject to no work-related requirements),
  - (iii) the day before the date on which the claimant is no longer required to take a particular action specified as a work preparation requirement by the Department under Article 21, or
  - (iv) the date on which the award terminates (other than by reason of the claimant ceasing to be, or becoming, a member of a couple),whichever is soonest, and

- (b) whichever of the following number of days is applicable in the claimant's case—
  - (i) 7 days, if paragraphs (ii) and (iii) do not apply,
  - (ii) 14 days, if there was another sanctionable failure of a kind mentioned in paragraph (1) in the 364 days preceding the failure in question for which a 7 day reduction period applies, or
  - (iii) 28 days, if there was another sanctionable failure of a kind mentioned in paragraph (1) in the 364 days preceding the failure in question for which a 14 day or 28 days reduction period applies.

(3) Where the claimant is aged 16 or 17 years on the date of the sanctionable failure, the reduction period is—

- (a) the number of days beginning with the date of the sanctionable failure and ending with—
  - (i) the day before the date on which the claimant meets a compliance condition specified by the Department,
  - (ii) the day before the date on which the claimant falls within Article 24 of the Order (claimants subject to no work-related requirements),
  - (iii) the day before the date on which the claimant is no longer required to take a particular action specified as a work preparation requirement by the Department under Article 21, or

- (iv) the date on which the award terminates (other than by reason of the claimant ceasing to be, or becoming, a member of a couple),  
 whichever is soonest, and
- (b) if there was another sanctionable failure of a kind mentioned in paragraph (1) within 364 days, but not within 13 days, beginning with the date of the current failure, 7 days.

### **Lowest-level sanction**

**102.**—(1) This regulation specifies the reduction period for a sanctionable failure under Article 32 of the Order (other sanctions) where it is a failure by a claimant who falls within Article 25 of the Order (claimants subject to work-focused interview requirement only) to comply with a requirement under that Article.

(2) The reduction period is the number of days beginning with the date of the sanctionable failure and ending with—

- (a) the day before the date on which the claimant meets a compliance condition specified by the Department;
- (b) the day before the date on which the claimant falls within Article 24 of the Order (claimants subject to no work-related requirements), or
- (c) the day on which the award terminates (other than by reason of the claimant ceasing to be, or becoming, a member of a couple),

whichever is soonest.

### *When reduction to have effect*

### **Start of the reduction**

**103.** A reduction period determined in relation to a sanctionable failure takes effect from—

- (a) the first day of the assessment period in which the Department determines that the amount of the award is to be reduced under Article 31 or 32 of the Order (higher-level or other sanctions) (but see also regulation 104(2))(reduction period to continue where award terminates)),
- (b) if the amount of the award of universal credit for the assessment period referred to in paragraph (a) is not reduced in that period, the first day of the next assessment period, or
- (c) if the amount of the award for the assessment period referred to in paragraph (a) or (b) is already subject to a reduction because of a previous sanctionable failure, the first day in respect of which the amount of the award is no longer subject to that reduction.

### **Reduction period to continue where award terminates**

**104.**—(1) If an award of universal credit terminates while there is an outstanding reduction period, the period continues to run as if a daily reduction were being applied and if the claimant becomes entitled to a new award (whether as a single or joint claimant) before that period expires, that award is subject to a reduction for the remainder of the total outstanding reduction period.

(2) If an award of universal credit terminates before the Department determines that the amount of the award is to be reduced under Article 31 or 32 of the Order (higher-level or other sanctions) in relation to a sanctionable failure and that determination is made after the claimant becomes entitled to a new award the reduction period in relation to that failure is to have effect for the purposes of paragraph (1) as if that determination had been made on the day before the previous award terminated.

### **Suspension of a reduction where fraud penalty applies**

**105.**—(1) A reduction in the amount of an award under Article 31 or 32 of the Order (higher-level or other sanctions) is to be suspended for any period during which the provisions of section 5B, section 6 or section 8 of the Social Security Fraud Act (Northern Ireland) 2001(77) (loss of benefit in case of conviction, penalty or caution for benefit offence, loss of benefit for second or subsequent conviction of benefit offence and effect of offence on benefits for members of offender’s family) apply to the award.

(2) The reduction ceases to have effect on the day on which that period begins and begins again on the day after that period ends.

### **When a reduction is to be terminated**

**106.**—(1) A reduction in the amount of an award under Article 31 or 32 of the Order (higher-level or other sanctions) is to be terminated where—

- (a) since the date of the most recent sanctionable failure which gave rise to a reduction, the claimant has been in paid work for a period of, or for periods amounting in total to, at least 6 months, and
- (b) the claimant’s monthly earnings during that period or those periods were equal to or exceeded—

- (i) the claimant’s individual threshold,

- “(ia) where the claimant has no individual threshold, the amount that a person would be paid for 16 hours per week at the hourly rate in regulation 4 of the National Minimum Wage Regulations, converted to a monthly amount by multiplying by 52 and dividing by 12, or”

- (ii) if paragraph (4) of regulation 89 (threshold for an apprentice) applies, the amount applicable under that paragraph.

(2) The termination of the reduction has effect—

- (a) where the date on which paragraph (1) is satisfied falls within a period of entitlement to universal credit, from the beginning of the assessment period in which that date falls, or
- (b) where that date falls outside a period of entitlement to universal credit, from the beginning of the first assessment period in relation to any subsequent award.

(3) A claimant who is treated as having earned income in accordance with regulation 63 (minimum income floor) in respect of an assessment period is to be taken to have monthly earnings equal to their individual threshold in respect of any week falling within that assessment period.

### *Amount of reduction*

### **Amount of reduction for each assessment period**

**107.**—(1) Where it has been determined that an award of universal credit is to be reduced under Article 31 or 32 of the Order (higher-level or other sanctions), the amount of the reduction for each assessment period in respect of which a reduction has effect is to be calculated as follows.

#### *Step 1*

Take the number of days—

- (a) in the assessment period; or

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(77) 2001 c. 17 (N.I.); section 5B was inserted by section 19(1) of the Welfare Reform Act (Northern Ireland) 2010 c. 13 (N.I.).

(b) if lower, in the total outstanding reduction period, and deduct any days in that assessment period for which the reduction is suspended in accordance with regulation 105 (suspension of a reduction where fraud penalty applies).

*Step 2*

Multiply the number of days produced by step 1 by the daily reduction rate (see regulation 108).

*Step 3*

If necessary, adjust the amount produced by step 2 so that it does not exceed—

- (c) the amount of the standard allowance applicable to the award; or
- (d) in the case of a joint claim where a determination under Article 31 or 32 of the Order (higher-level or other sanctions) applies only in relation to one claimant, half the amount of that standard allowance.

*Step 4*

Deduct the amount produced by steps 2 and 3 from the amount of the award for the assessment period after any deduction has been made in accordance with Part 7 (the benefit cap).

**Daily reduction rate**

**108.**—(1) The daily reduction rate for the purposes of regulation 107 (amount of reduction for each assessment period) is, unless paragraph (2) or (3) applies, an amount equal to the amount of the standard allowance that is applicable to the award multiplied by 12 and divided by 365.

(2) The daily reduction rate is 40% of the rate set out in paragraph (1) if, at the end of the assessment period—

- (a) the claimant is aged 16 or 17,
  - (b) the claimant falls within Article 24 of the Order (claimants subject to no work-related requirements) by virtue of —
    - (i) paragraph (2)(c) of that Article (responsible carer for a child under the age of 1), or
    - (ii) regulation 88(1)(c), (d) or (f) (claimant within 11 weeks before, or 15 weeks after confinement, adopter or responsible foster parent of a child under the age of 1), or
  - (c) the claimant falls within Article 25 (claimants subject to work-focused interview requirement only).
- (3) The daily reduction rate is nil if, at the end of the assessment period, the claimant falls within Article 24 of the Order by virtue of having limited capability for work and work-related activity.
- (4) The amount of the rate in paragraphs (1) and (2) is to be rounded down to the nearest 10 pence.
- (5) In the case of joint claimants—
- (a) each joint claimant is considered individually for the purpose of determining the rate applicable under paragraphs (1) to (3), and
  - (b) half of any applicable rate is applied to each joint claimant accordingly.

*Miscellaneous*

**Application of ESA or JSA sanctions to universal credit**

**109.** Schedule 11 has effect in relation to persons who are, or have been, entitled to an employment and support allowance or a jobseeker's allowance and who are, or become, entitled to universal credit.

### **Failures for which no reduction is applied**

**110.**—(1) No reduction is to be made under Article 31 or Article 32 of the Order (higher-level or other sanctions) for a sanctionable failure where—

- (a) the sanctionable failure is listed in Article 31(2)(b) or (c) (failure to apply for a particular vacancy for paid work, or failure to take up an offer of paid work) and the vacancy is because of a strike arising from a trade dispute,
- (b) the sanctionable failure is listed in Article 31(2)(d) (claimant ceases paid work or loses pay), and the following circumstances apply—
  - (i) the claimant’s work search and work availability requirements are subject to limitations imposed under Article 22(4) and Article 23(3) in respect of work available for a certain number of hours,
  - (ii) the claimant takes up paid work, or is in paid work and takes up more paid work that is for a greater number of hours, and
  - (iii) the claimant voluntarily ceases that paid work, or more paid work, or loses pay, within a trial period,
- (c) the sanctionable failure is that the claimant voluntarily ceases paid work, or loses pay, because of a strike arising from a trade dispute,
- (d) the sanctionable failure is that the claimant voluntarily ceases paid work as a member of the regular or reserve forces, or loses pay in that capacity,
- (e) the sanctionable failure is listed in Article 31(4) (failure to take up an offer of paid work, or to cease paid work or lose pay before making a claim), and the period of the reduction that would otherwise apply under regulation 99(4) (higher-level sanction) is the same as, or shorter than, the number of days beginning with the day after the date of the sanctionable failure and ending with the date of claim,
- (f) the sanctionable failure is that the claimant voluntarily ceases paid work in one of the following circumstances—
  - (i) the claimant has been dismissed because of redundancy after volunteering or agreeing to be dismissed,
  - (ii) the claimant has ceased work on an agreed date without being dismissed in pursuance of an agreement relating to voluntary redundancy, or
  - (iii) the claimant has been laid-off or kept on short-time to the extent specified in Article 183 of the Employment Rights (Northern Ireland) Order 1996, and has complied with the requirements of that Article, or
- (g) the sanctionable failure is that the claimant by reason of misconduct, or voluntarily and for no good reason, ceases paid work or loses pay, but the claimant’s monthly earnings (or, if the claimant is a member of a couple, their joint monthly earnings) have not fallen below the amount specified in regulation 97(14) (circumstances in which requirements must not be imposed).

(2) In this regulation “regular or reserve forces” has the same meaning as in section 374 of the Armed Forces Act 2006(78).

## CHAPTER 3

### HARDSHIP

#### Conditions for hardship payments

**111.**—(1) The Department must make a hardship payment to a single claimant or to joint claimants only where—

- (a) the claimant in respect of whose sanctionable failure the award has been reduced under Article 31 or 32 of the Order (higher-level or other sanctions) is aged 18 or over,
- (b) the single claimant or each joint claimant has met any compliance condition specified by the Department under regulation 101(2)(a)(i),
- (c) the single claimant or either joint claimant completes and submits an application—
  - (i) approved for the purpose by the Department, or in such other form as it accepts as sufficient, and
  - (ii) in such manner as the Department determines,
- (d) the single claimant or either joint claimant furnishes such information or evidence as the Department may require, in such manner as it determines,
- (e) the single claimant or each joint claimant accepts that any hardship payments that are paid are recoverable,
- (f) the Department is satisfied that the single claimant or each joint claimant has complied with all the work-related requirements that they were required to comply with in the 7 days preceding the day on which the claimant or joint claimants submitted an application in accordance with sub-paragraph (c);
- (g) the Department is satisfied that the single claimant or each joint claimant is in hardship, and
- (h) the daily reduction rate in regulation 108(1) applies for the purposes of the reduction in respect of the claimant under Article 31 or 32 of the Order (higher-level or other sanctions) .

(2) For the purposes of paragraph (1)(g) a single claimant or joint claimants must be considered as being in hardship only where—

- (a) they cannot meet their immediate and most basic and essential needs, specified in paragraph (3), or the immediate and most basic and essential needs of a child or qualifying young person for whom the single claimant or either of the joint claimants is responsible, only because the amount of their award has been reduced—
  - (i) under Article 31 or 32 of the Order (higher-level or other sanctions), by the daily reduction rate set out in regulation 108(1), or
  - (ii) by the daily reduction rate prescribed in regulations made under section 5B(5A), 6(2A) or 8(2A) of the Social Security Fraud Act (Northern Ireland) 2001(loss of benefit in case of conviction, penalty or caution for benefit offence, loss of benefit for commission of benefit offence and effect of offence on benefits for members of offender’s family) which is equivalent to the rate referred to in paragraph (i),
- (b) they have made every effort to access alternative sources of support to meet, or partially meet, such needs, and
- (c) they have made every effort to cease to incur any expenditure which does not relate to such needs.

(3) The needs referred to in paragraph (2) are—

- (a) accommodation;

- (b) heating;
- (c) food;
- (d) hygiene.

### **The period of hardship payments**

**112.**—(1) A hardship payment is to be made in respect of a period which—

- (a) begins with the date on which all the conditions in regulation 111(1) are met; and
- (b) unless paragraph (2) applies, ends with the day before the normal payment date for the assessment period in which those conditions are met.

(2) If the period calculated in accordance with paragraph (1) would be 7 days or less, it does not end on the date referred to in paragraph (1)(b) but instead ends on the normal payment date for the following assessment period or, if earlier, the last day on which the award is to be reduced under Article 31 or 32 of the Order (higher-level or other sanctions) or under section 5B(5A), 6(2A) or 8(2A) of the Social Security Fraud Act (Northern Ireland) 2001 (loss of benefit in case of conviction, penalty or caution for benefit offence, loss of benefit for commission of benefit offence and effect of offence on benefits for members of offender’s family).

(3) In this regulation “the normal payment date” for an assessment period is the date on which the Department would normally expect to make a regular payment of universal credit in respect of an assessment period in a case where payments of universal credit are made monthly in arrears.

### **The amount of hardship payments**

**113.** The amount of a hardship payment for each day in respect of which such a payment is to be made is to be determined in accordance with the formula—

$$60\% \text{ of } \left( \frac{A \times 12}{365} \right)$$

where A is equal to the amount of the reduction in the single claimant’s or joint claimants’ award calculated under regulation 107 (amount of reduction for each assessment period) for the assessment period preceding the assessment period in which an application is submitted under regulation 111(1)(c).

### **Recoverability of hardship payments**

**114.**—(1) Subject to paragraphs (2) and (3), hardship payments are recoverable in accordance with section 69ZH of the Social Security Administration (Northern Ireland) Act 1992 (recovery of hardship payments etc.)(79).

(2) Paragraph (1) does not apply in relation to any assessment period in which the single claimant, or each joint claimant, falls within Article 24 of the Order (claimants subject to no work-related requirements)—

- (a) by virtue of regulation 89(claimants subject to no work-related requirements - the earnings thresholds), or
- (b) where regulation 89 does not apply to a single claimant or to joint claimants, that claimant or the joint claimants’ monthly earnings are equal to or exceed the amount that a person would be paid for 16 hours per week at the hourly rate in regulation 4 of the National

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(79) Section 69ZH was inserted by Article 109(1) of Order.

Minimum Wage Regulations, converted to a monthly amount by multiplying by 52 and dividing by 12.

(3) Hardship payments cease to be recoverable where, since the last day on which the claimant's or the joint claimants' award was subject to a reduction under Article 31 or 32 of the Order (higher-level or other sanctions) —

- (a) a single claimant has had monthly earnings that are equal to or exceed—
  - (i) their individual threshold, or
  - (ii) where the claimant has no individual threshold, the amount that a person would be paid for 16 hours per week at the hourly rate in regulation 4 of the National Minimum Wage Regulations, converted to a monthly amount by multiplying by 52 and dividing by 12, or
- (b) joint claimants have had combined monthly earnings that are equal to or exceed—
  - (i) the sum of their individual thresholds,
  - (ii) where only one of the joint claimants has an individual threshold, the amount of the individual threshold,
  - (iii) where neither of the joint claimants has an individual threshold, the amount that a person would be paid for 16 hours per week at the hourly rate in regulation 4 of the National Minimum Wage Regulations, converted to a monthly amount by multiplying by 52 and dividing by 12,

for a period of, or more than one period where the total of those periods amounts to, at least 6 months.

Signed by the authority of the Secretary of State for Work and Pensions

5th May 2016

*Freud*  
Minister of State,  
Department for Work and Pensions

## SCHEDULES

### SCHEDULE 1

Regulation 26(2)

#### Meaning of payments in respect of accommodation

##### *General*

#### **Interpretation**

1. In this Schedule—

“approved premises” means hostels which receive Supporting People funding specifically for offenders and allocate bedspaces for criminal justice referrals;

“care home” means a residential care home as defined in Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003<sup>(80)</sup> and includes an independent hospital;

“equity sharing lease” has the meaning given in regulation 27(6) (amount of the housing costs element – renters and owner-occupiers);

“exempt accommodation” has the meaning given in paragraph 4(9) of Schedule 3 to the Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006<sup>(81)</sup>;

“housing association” has the meaning given by Article 3 of the Housing (Northern Ireland) Order 1992<sup>(82)</sup>;

“the Housing Executive” means the Northern Ireland Housing Executive;

“independent hospital” has the meaning as defined in Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“registered charity” means a charity entered in the register of charities maintained under Part 4 of the Charities Act (Northern Ireland) 2008<sup>(83)</sup>;

“tent” means a moveable structure that is designed or adapted (solely or mainly) for the purpose of sleeping in a place for any period and that is not a caravan, a mobile home or a houseboat;

“voluntary organisation” means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association.

##### *Rent payments*

#### **Rent Payments**

2. “Rent payments” are such of the following as are not excluded by paragraph 3—

- (a) payments of rent;

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<sup>(80)</sup> S.I. 2003/431 (N.I. 9).

<sup>(81)</sup> S.R. 2006/407.

<sup>(82)</sup> S.I. 1992/1725 (N.I. 15).

<sup>(83)</sup> 2008 c. 12 (N.I.) as amended by 2013 c. 3 (N.I.).

- (b) payments for a licence or other permission to occupy accommodation;
- (c) mooring charges payable for a houseboat;
- (d) in relation to accommodation which is a caravan or mobile home, payments in respect of the site on which the accommodation stands.

### **Payments excluded from being rent payments**

3. The following are excluded from being “rent payments”—
- (a) payments of ground rent;
  - (b) payments in respect of a tent or the site on which a tent stands;
  - (c) payments in respect of approved premises;
  - (d) payments in respect of a care home;
  - (e) payments in respect of accommodation specified in paragraph 4.
  - (f) payments which, are owner-occupier payments within the meaning of paragraph 5;
  - (g) payments which, are service charge payments within the meaning of paragraph 8.

### **Specified accommodation**

4.—(1) The accommodation referred to in paragraph 3(e) is accommodation to which one or more of the following sub-paragraphs applies.

- (2) This sub-paragraph applies to accommodation which is exempt accommodation.
- (3) This sub-paragraph applies to accommodation—
  - (a) which is provided by a relevant body,
  - (b) into which the claimant has been admitted in order to meet a need for care, support or supervision, and
  - (c) where the claimant receives care, support or supervision.
- (4) This sub-paragraph applies to accommodation which—
  - (a) is provided by the Housing Executive or a relevant body to the claimant because the claimant has left the home as a result of domestic violence, and
  - (b) consists of a building, or part of a building, which is used wholly or mainly for the non-permanent accommodation of persons who have left their homes as a result of domestic violence.
- (5) This sub-paragraph applies to accommodation—
  - (a) which would be a hostel within the meaning of paragraph 28(6) (renters excepted from shared accommodation) of Schedule 4 (housing costs element for renters) but for it being owned or managed by the Housing Executive, and
  - (b) where the claimant receives care, support or supervision.
- (6) In this paragraph—
  - “domestic violence” has the meaning given in regulation 96 (victims of domestic violence);
  - “relevant body” means a—
    - (a) housing association,
    - (b) registered charity, or
    - (c) voluntary organisation.

### *Owner-occupier payments*

#### **Owner-occupier payments**

- 5.—(1) “Owner-occupier payments” are—
- (a) loan interest payments within the meaning of paragraph 6;
  - (b) alternative finance payments within the meaning of paragraph 7.
- (2) Payments are excluded from sub-paragraph (1) if they are service charge payments within the meaning of paragraph 8.

#### **Meaning of “loan interest payments”**

6. “Loan interest payments” means payments of interest on a loan which is secured on the accommodation in respect of which the claimant meets the occupation condition.

#### **Meaning of “alternative finance payments”**

7.—(1) “Alternative finance payments” means payments that are made under alternative finance arrangements which were entered into to enable a person to acquire an interest in the accommodation in respect of which the claimant meets the occupation condition.

(2) “Alternative finance arrangements” has the same meaning as in Part 10A of the Income Tax Act 2007(84).

### *Service charge payments*

#### **Service charge payments**

- 8.—(1) “Service charge payments” are payments which—
- (a) fall within sub-paragraph (2),
  - (b) are not excluded by sub-paragraph (3), and
  - (c) in any case to which paragraph 9 applies, meet all of the conditions set out in that paragraph.
- (2) The payments falling within this sub-paragraph are payments of amounts which are, in whole or in part—
- (a) payments of, or towards, the costs of or charges for providing services or facilities for the use or benefit of persons occupying accommodation, or
  - (b) fairly attributable to the costs of or charges for providing such services or facilities connected with the accommodation as are available for the use or benefit of persons occupying accommodation.
- (3) Payments are excluded by this sub-paragraph where—
- (a) a loan that falls within paragraph 6 was taken out for the purposes of making the payments, or
  - (b) the services or facilities to which the payments relate are provided for the use or benefit of any person occupying—
    - (i) a tent,

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(84) 2007 c. 3; part 10A was inserted by section 365 of, and Part 1 of Schedule 2 to, the Taxation (International and Other Provisions) Act 2010 (c. 8).

- (ii) approved premises,
  - (iii) a care home, or
  - (iv) exempt accommodation.
- (4) It is irrelevant for the purposes of sub-paragraph (2)—
- (a) whether or not the payments are separately identified as relating to the costs or charges referred to in sub-paragraph (2);
  - (b) whether they are made in addition to or as part of any other payment (including a payment that would otherwise be regarded as a rent payment within the meaning of paragraph 2);
  - (c) whether they are made under the same or a different agreement as that under which the accommodation is occupied.

**Additional conditions: social rented sector renters and owner-occupiers**

9.—(1) This paragraph applies for the purposes of calculating the amount of the housing costs element to be included in a claimant's award of universal credit but only as regards calculations made under—

- (a) Part 5 of Schedule 4 (social rented sector, other than temporary accommodation); or
  - (b) Schedule 5 (housing costs element for owner-occupiers).
- (2) The following are the conditions referred to in paragraph 8(1)(c).
- (3) The first condition is that making the payments is a condition on which the right to occupy the accommodation depends.
- (4) The second condition is that the payments fall within one or more of the following categories:

*Category A - Payments to maintain the general standard of the accommodation*

Payments within this category are for—

- (a) the external cleaning of windows, but only in relation to upper floors of a multi-storey building;
- (b) other internal or external maintenance or repair of the accommodation, but only where the payments are separately identifiable as relating to such maintenance or repair, and payable by—
  - (i) a claimant who occupies accommodation under an equity sharing lease, or
  - (ii) a claimant in whose case any amount of housing costs element to be included in their award in respect of those payments would fall to be calculated under Schedule 5.

*Category B - Payments for the general upkeep of areas of communal use*

Payments within this category are for ongoing maintenance or cleaning of, and the supply of water, fuel or any other commodity relating to the common use of, internal or external areas, including areas for reasonable facilities (such as laundry rooms or children's play areas).

*Category C - Payments in respect of basic communal services*

Payments within this category are for provision, ongoing maintenance, cleaning or repair in connection with basic services generally available to all persons living in the accommodation (such as refuse collection, communal lifts, secure building access or wireless or television aerials to receive a service free of charge).

*Category D - Accommodation-specific charges*

Payments within this category are specific to the particular accommodation occupied by a claimant but are limited to payments for the use of essential items contained in it (such as furniture or domestic appliances).

(5) The third condition is that the costs and charges to which the payments relate are of a reasonable amount and relate to services or facilities of such description as it is reasonable to provide.

(6) The fourth condition is that the payments are none of the following—

- (a) payments to the extent that they relate to the costs of or charges for providing services or facilities in respect of which payments out of public funds might otherwise be made (irrespective of whether the claimant has any entitlement to payments so made);
- (b) payments in connection with the use of an asset which result in the transfer of the asset or any interest in it;
- (c) payments to the extent that they relate to the costs of or charges for providing food, medical services or personal services (including personal care) of any description.

(7) Payments that are not service charge payments within the meaning of paragraph 8 by reason only that they fail to meet any of the conditions set out in sub-paragraphs (3) to (6) are nevertheless to be treated as if they were such service charge payments for the purposes of paragraphs 3(g) and 5(2).

## SCHEDULE 2

Regulation 26(3)

### Claimant treated as liable or not liable to make payments

## PART I

### Treated as liable to make payments

#### **Certain other persons liable to make payments**

1.—(1) A claimant is to be treated as liable to make payments where the person who is liable to make the payments is—

- (a) any child or qualifying young person for whom the claimant (or if the claimant is a member of a couple, either member) is responsible, or
- (b) in the case of a claimant who is a member of a couple claiming as a single person, the other member of the couple.

(2) Sub-paragraph (1)(b) does not apply to a person who is claiming as a single person by virtue of regulation 3(3) (polygamous marriages).

#### **Failure to pay by the person who is liable**

2.—(1) A claimant is to be treated as liable to make payments where all the conditions specified in sub-paragraph (2) are met.

(2) These are the conditions—

- (a) the person who is liable to make the payments is not doing so;
- (b) the claimant has to make the payments in order to continue occupation of the accommodation;
- (c) the claimant's circumstances are such that it would be unreasonable to expect them to make other arrangements;
- (d) it is otherwise reasonable in all the circumstances to treat the claimant as liable to make the payments.

(3) In determining what is reasonable for the purposes of sub-paragraph (2)(d) in the case of owner-occupier payments, regard may be had to the fact that continuing to make the payments may benefit the person with the liability to make the payments.

#### **Payments waived in return for repair work**

3. A claimant is to be treated as liable to make payments where—
- (a) the liability to make payments is waived by the person (“P”) to whom the liability is owed, and
  - (b) the waiver of that liability is by way of reasonable compensation for reasonable repair or re-decoration works carried out by the claimant to the accommodation which P would otherwise have carried out or been required to carry out.

#### **Rent free periods**

4.—(1) Where the arrangements under which the claimant occupies the accommodation provide for rent free periods, the claimant is to be treated as liable to make rent payments and service charge payments in respect of accommodation for the whole of any rent free period.

- (2) In sub-paragraph (1) “rent free period” has the meaning given in paragraph 6(5) of Schedule 4.

## **PART 2**

### **Treated as not liable to make payments**

#### **Liability to make rent and other payments to close relative**

5.—(1) A claimant is to be treated as not liable to make rent payments where the liability to make them is owed to a person who lives in the accommodation and who is—

- (a) if the claimant is a member of a couple, the other member, or
- (b) a child or qualifying young person for whom—
  - (i) the claimant is responsible, or
  - (ii) if the claimant is a member of a couple, the other member is responsible, or
- (c) a close relative of—
  - (i) the claimant, or
  - (ii) if the claimant is a member of a couple, the other member, or
  - (iii) any child or qualifying young person who falls within paragraph (b).

(2) A claimant who is treated under sub-paragraph (1) as not liable to make rent payments to any person is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to the same person.

#### **Liability to make rent and other payments to company**

6.—(1) A claimant is to be treated as not liable to make rent payments where the liability to make them is owed to a company and the owners or directors of the company include—

- (a) the claimant,
- (b) if the claimant is a member of a couple, the other member,

- (c) a qualifying young person for whom a person who falls within paragraph (a) or (b) is responsible, or
  - (d) a close relative of any of the above who lives in the accommodation with the claimant.
- (2) A claimant who is treated under sub-paragraph (1) as not liable to make rent payments to the company is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to—
- (a) the same company; or
  - (b) another company of which the owners or directors include any of the persons listed in sub-paragraph (1)(a) to (d).
- (3) In this paragraph, “owner”, in relation to a company (“C”), means a person (“A”) who has a material interest in C.
- (4) For the purposes of sub-paragraph (3), A has a material interest in C if A—
- (a) holds at least 10% of the shares in C, or
  - (b) is able to exercise a significant influence over the management of C by virtue of A’s shareholding in C, or
  - (c) holds at least 10% of the shares in a parent undertaking (“P”) of C, or
  - (d) is able to exercise a significant influence over the management of P by virtue of A’s shareholding in P, or
  - (e) is entitled to exercise, or control the exercise of, voting power in C which, if it consists of voting rights, constitutes at least 10% of the voting rights in C, or
  - (f) is able to exercise a significant influence over the management of C by virtue of A’s entitlement to exercise, or control the exercise of, voting rights in C, or
  - (g) is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P, or
  - (h) is able to exercise a significant influence over the management of P by virtue of A’s entitlement to exercise, or control the exercise of, voting rights in P.
- (5) For the purposes of sub-paragraph (4), references to “A” are to—
- (a) the person, or
  - (b) any of the person’s associates, or
  - (c) the person and any of the person’s associates taken together.
- (6) For the purposes of sub-paragraph (5), “associate”, in relation to a person (“A”) holding shares in an undertaking (“X”) or entitled to exercise or control the exercise of voting power in relation to another undertaking (“Y”), means—
- (a) the spouse or civil partner of A;
  - (b) a child or stepchild of A (if under 18);
  - (c) the trustee of any settlement under which A has a life interest in possession;
  - (d) an undertaking of which A is a director;
  - (e) a person who is an employee or partner of A;
  - (f) if A has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in X or Y, that other person;
  - (g) if A has with any other person an agreement or arrangement under which they undertake to act together in exercising their voting power in relation to X or Y, that other person.
- (7) In sub-paragraph (6)(c), “settlement” means any disposition or arrangement under which property is held on trust (or subject to comparable obligations).

(8) For the purposes of this paragraph—

“parent undertaking” has the same meaning as in the Financial Services and Markets Act 2000<sup>(85)</sup> (see section 420 of that Act);

“shares” means—

- (a) in relation to an undertaking with shares, allotted shares (within the meaning of Part 17 of the Companies Act 2006<sup>(86)</sup>);
- (b) in relation to an undertaking with capital but no share capital, rights to share in the capital of the body;
- (c) in relation to an undertaking without capital, interests—
  - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the body, or
  - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up;

“voting power”, in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the rights under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

#### **Liability to make rent and other payments to a trust**

7.—(1) A claimant is to be treated as not liable to make rent payments where the liability to make them is owed to a trustee of a trust and the trustees or beneficiaries of the trust include—

- (a) the claimant,
- (b) if the claimant is a member of a couple, the other member,
- (c) a child or a qualifying young person for whom a person who falls within paragraph (a) or (b) is responsible, or
- (d) a close relative of any of the above who lives in the accommodation with the claimant.

(2) A claimant who is treated under sub-paragraph (1) as not liable to make rent payments to the trustee of a trust is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to—

- (a) a trustee of the same trust, or
- (b) a trustee of another trust of which the trustees or beneficiaries include any of the persons listed in sub-paragraph (1)(a) to (d).

#### **Liability to make owner-occupier and other payments to member of same household**

8.—(1) A claimant is to be treated as not liable to make owner-occupier payments where the liability to make the payments is owed to a person who lives in the claimant’s household.

(2) A claimant who is treated under sub-paragraph (1) as not liable to make owner-occupier payments to any person is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to the same person.

(3) A claimant is to be treated as not liable to make service charge payments where—

- (a) there is no liability to make rent payments or owner-occupier payments, but

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<sup>(85)</sup> 2000 c. 8.

<sup>(86)</sup> 2006 c. 46.

- (b) the liability to make service charge payments is to a person who lives in the claimant's household.

### **Arrears of payments**

9.—(1) A claimant is to be treated as not liable to make payments in respect of any amount which—

- (a) represents an increase in the sum that would be otherwise payable, and
- (b) is the result of—
  - (i) outstanding arrears of any payment or charge in respect of the accommodation,
  - (ii) outstanding arrears of any payment or charge in respect of other accommodation, previously occupied by the claimant, or
  - (iii) any other unpaid liability to make a payment or charge.

(2) Sub-paragraph (1) does not apply if the claimant is treated as not liable to make the payments under any of the preceding provisions of this Part of this Schedule.

### **Contrived liability**

10.—(1) A claimant is to be treated as not liable to make payments where the Department is satisfied that the liability to make the payments was contrived in order to secure the inclusion of the housing costs element in an award of universal credit or to increase the amount of that element.

(2) Sub-paragraph (1) does not apply if the claimant is treated as not liable to make the payments under any of the preceding provisions of this Part of this Schedule.

## SCHEDULE 3

Regulation 26(4)

Claimant treated as occupying or not occupying accommodation

## PART 1

Treated as occupying accommodation

### **The occupation condition: the general rule**

1.—(1) The general rule is that a claimant is to be treated as occupying as their home the accommodation which the claimant normally occupies as their home.

(2) Subject to the following provisions of this Part, no claimant is to be treated as occupying accommodation which comprises more than one dwelling.

(3) Where none of those provisions applies and the claimant occupies more than one dwelling, regard is to be had to all the circumstances in determining which dwelling the claimant normally occupies as their home, including (among other things) any persons with whom the claimant occupies each dwelling.

(4) In this paragraph—

“Dwelling” means a “dwelling house” within the meaning of Article 4 (Interpretation: definition of “dwelling house”, etc.) of, and Schedule 5 to the Rates (Northern Ireland) Order

1977(87). Dwelling also includes any garage, garden and outbuildings normally occupied by the claimant as his home, including any part thereof not so occupied which it is impracticable or unreasonable to sell separately, together with –

- (a) any agricultural land adjoining that dwelling, and
- (b) any land not adjoining that dwelling which it is impracticable or unreasonable to sell separately.

### **Claimant living in other accommodation during essential repairs**

2.—(1) Where a claimant—

- (a) is required to move into accommodation (“the other accommodation”) on account of essential repairs being carried out to the accommodation the claimant normally occupies as their home,
- (b) intends to return to the accommodation which is under repair, and
- (c) meets the payment condition and the liability condition in respect of either the other accommodation or the accommodation which they normally occupy as their home (but not both),

the claimant is to be treated as normally occupying as their home the accommodation in respect of which those conditions are met.

(2) A claimant is subject to the general rule in paragraph 1 where—

- (a) sub-paragraph (1)(a) and (b) apply to the claimant; but
- (b) the claimant meets the payment condition and the liability condition in respect of both the other accommodation and the accommodation which they normally occupy as their home.

### **Claimant housed in two dwellings by provider of social housing**

3.—(1) In sub-paragraph (2), “relevant claimant” means a claimant who meets all of the following conditions—

- (a) the first condition is that the claimant has been housed in two dwellings (“accommodation A” and “accommodation B”) by a provider of social housing on account of the number of children and qualifying young persons living with the claimant;
- (b) the second condition is that the claimant normally occupies both accommodation A and accommodation B with children or qualifying young persons for whom the claimant is responsible;
- (c) the third condition is that the claimant meets the payment condition and the liability condition in respect of both accommodation A and accommodation B (and for these purposes it is irrelevant whether the claimant’s liability is to the same or a different person).

(2) In the case of a relevant claimant, both accommodation A and accommodation B are to be treated as the single accommodation which the relevant claimant normally occupies as their home.

(3) In sub-paragraph (1), “provider of social housing” has the meaning given in paragraph 2 of Schedule 4.

### **Moving home: adaptations to new home for disabled person**

4.—(1) Sub-paragraph (2) applies where—

- (a) the claimant has moved into accommodation (“the new accommodation”) and, immediately before the move, met the payment condition and liability condition in respect of the new accommodation, and
  - (b) there was a delay in moving in that it was necessary to enable the new accommodation to be adapted to meet the disablement needs of a person specified in sub-paragraph (3).
- (2) The claimant is to be treated as occupying both the new accommodation and the accommodation from which the move was made (“the old accommodation”) if—
- (a) immediately before the move, the claimant was entitled to the inclusion of the housing costs element in an award of universal credit in respect of the old accommodation, and
  - (b) the delay in moving into the new accommodation was reasonable.
- (3) A person is specified in this sub-paragraph if the person is—
- (a) a claimant or any child or qualifying young person for whom a claimant is responsible, and
  - (b) in receipt of—
    - (i) the care component of disability living allowance at the middle or highest rate,
    - (ii) attendance allowance, or
    - (iii) the daily living component of personal independence payment.
- (4) No claimant may be treated as occupying both the old accommodation and the new accommodation under this paragraph for more than one month.

#### **Claimant living in other accommodation because of reasonable fear of violence**

- 5.—(1) This paragraph applies where—
- (a) a claimant is occupying accommodation (“the other accommodation”) other than the accommodation which they normally occupy as their home (“the home accommodation”), and
  - (b) it is unreasonable to expect the claimant to return to the home accommodation on account of the claimant’s reasonable fear of violence in the home, or by a former partner, against the claimant or any child or qualifying young person for whom the claimant is responsible, but
  - (c) the claimant intends to return to the home accommodation.
- (2) The claimant is to be treated as normally occupying both the home accommodation and the other accommodation as their home if—
- (a) the claimant meets the payment condition and the liability condition in respect of both the home accommodation and other accommodation, and
  - (b) it is reasonable to include an amount in the housing costs element for the payments in respect of both the home accommodation and the other accommodation.
- (3) Where the claimant meets the payment condition and the liability condition in respect of one accommodation only, the claimant is to be treated as normally occupying that accommodation as their home but only if it is reasonable to include an amount in the housing costs element for the payments in respect of that accommodation.
- (4) No claimant may be treated as occupying both the home accommodation and the other accommodation under sub-paragraph (2) for more than 12 months.

#### **Moving in delayed by adaptations to accommodation to meet disablement needs**

- 6.—(1) The claimant is to be treated as having occupied accommodation before they moved into it where—

- (a) the claimant has since moved in and, immediately before the move, met the payment condition and the liability condition in respect of the accommodation,
  - (b) there was a delay in moving in that was necessary to enable the accommodation to be adapted to meet the disablement needs of a relevant person, and
  - (c) it was reasonable to delay moving in.
- (2) “Relevant person” means a person specified in paragraph 4(3).
- (3) No claimant may be treated as occupying accommodation under this paragraph for more than one month.

**Moving into accommodation following stay in hospital or care home**

- 7.—(1) The claimant is to be treated as having occupied accommodation before they moved into it where—
- (a) the claimant has since moved in and, immediately before the move, met the payment condition and the liability condition in respect of that accommodation, and
  - (b) the liability to make the payments arose while the claimant was a patient or accommodated in a care home (or, in the case of a joint claim, while both joint claimants were patients or were accommodated in a care home).
- (2) No claimant may be treated as occupying the accommodation under this paragraph for more than one month.
- (3) In this paragraph—
- “care home” has the meaning given in paragraph 1 of Schedule 1;
  - “patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution.

**PART 2**

**Treated as not occupying accommodation**

**Periods of temporary absence exceeding 6 months**

- 8.—(1) Subject to sub-paragraphs (2) and (3), a claimant is to be treated as no longer occupying accommodation from which they are temporarily absent where the absence exceeds, or is expected to exceed, 6 months.
- (2) Sub-paragraph (1) does not apply to a claimant who falls within paragraph 2.
- (3) Where, a claimant who falls within paragraph 5 is temporarily absent from the accommodation which they normally occupy as their home, the claimant is to be treated as no longer occupying that accommodation where the absence exceeds, or is expected to exceed, 12 months.

## SCHEDULE 4

Regulation 27(2)

### Housing costs element for renters

## PART I

### General

#### Definition of renter

1.—(1) This Schedule contains provisions about claimants to whom regulation 27(2) applies.

(2) Claimants who fall within sub-paragraph (1) are referred to in this Schedule as “renters” (and references to “joint renters” are to joint claimants to whom regulation 27(2) applies).

#### Interpretation

2. In this Schedule—

“exempt accommodation” has the meaning given in paragraph 1 of Schedule 1;

“extended benefit unit” has the meaning given in paragraph 8;

“housing cost contribution” has the meaning given in paragraph 12;

“the Housing Executive” means the Northern Ireland Housing Executive;

“joint renter” has the meaning given in paragraph 1(2);

“listed persons”, in relation to a renter, means—

- (a) the renter,
- (b) where the renter is a member of a couple, the other member of the couple, and
- (c) any child or qualifying young person for whom the renter (or either joint renter) is responsible;

“member of the armed forces” means a member of the regular forces or the reserve forces within the meaning of section 374 of the Armed Forces Act 2006(88);

“non-dependant” has the meaning given in paragraph 8(2);

“provider of social housing” means—

- (a) the Housing Executive; or
- (b) a registered housing association;

“the UC Housing Costs Regulations” means the Universal Credit Housing Costs (Executive Determinations) Regulations (Northern Ireland) 2016(89);

“registered housing association” means a housing association which is registered in a register maintained under Article 14 of the Housing (Northern Ireland) Order 1992(90);

“relevant payments” has the meaning given in paragraph 3;

“renter” means a single renter within the meaning of paragraph 1(2) or each of joint renters;

“renter who requires overnight care” is to be understood in accordance with paragraph 11(3) to (5);

“shared accommodation” has the meaning given in paragraph 26.

(88) 2006 c.52.

(89) S.R. 2016 No. 222.

(90) S.I. 1992/1725 (N.I. 15).

**“Relevant payments” for purposes of this Schedule**

- 3.—(1) “Relevant payments” means one or more payments of any of the following descriptions—
- (a) rent payments, and
  - (b) service charge payments.
- (2) “Rent payments” in relation to any calculation under Part 4 or 5 of this Schedule, has the meaning given in paragraph 2 of Schedule 1.
- (3) “Service charge payments”—
- (a) for the purposes of calculations under Part 4 of this Schedule, has the meaning given in paragraph 8 of Schedule 1, and
  - (b) for the purposes of calculations under Part 5 of this Schedule, is to be understood in accordance with paragraphs 8 and 9 of Schedule 1.

**PART 2**

**Exception to inclusion of housing costs element**

**No housing costs element for 16 or 17 year old care leavers**

4. Article 16(1) of the Order (housing costs) does not apply to any renter who is 16 or 17 years old and is a care leaver.

**PART 3**

**General provisions about calculation of amount of housing costs element for renters**

**Relevant payments to be taken into account**

- 5.—(1) Where a renter meets the payment condition, liability condition and occupation condition in respect of one or more descriptions of relevant payment, each such description is to be taken into account for the purposes of the calculation under Part 4 or 5 of this Schedule.
- (2) No account is to be taken of any amount of a relevant payment to the extent that all of the conditions referred to in sub-paragraph (1) are not met in respect of that amount.
- (3) Any particular payment for which a renter is liable is not to be brought into account more than once whether in relation to the same or a different renter (but this does not prevent different payments of the same description being brought into account in respect of an assessment period).

**Relevant payments calculated monthly**

- 6.—(1) Where any relevant payment is to be taken into account under paragraph 5, the amount of that payment is to be calculated as a monthly amount.
- (2) Where the period in respect of which a renter is liable to make a relevant payment is not a month, an amount is to be calculated as the monthly equivalent, so for example—
- (a) weekly payments are multiplied by 52 and divided by 12,
  - (b) two-weekly payments are multiplied by 26 and divided by 12,
  - (c) four-weekly payments are multiplied by 13 and divided by 12,
  - (d) three-monthly payments are multiplied by 4 and divided by 12, and

(e) annual payments are divided by 12.

(3) Where a renter is liable for relevant payments under arrangements that provide for one or more rent free periods, subject to paragraph (4) the monthly equivalent is to be calculated over 12 months by reference to the total number of relevant payments which the renter is liable to make in that 12 month period.

(4) Where sub-paragraph (3) applies and the relevant payments in question are-

(a) weekly payments, the total number of weekly payments which the renter is liable to make in any 12 month period shall be calculated by reference to the formula—

$$52 - RFP;$$

(b) two-weekly payments, the total number of two-weekly payments which the renter is liable to make in any 12 month period shall be calculated by reference to the formula—

$$26 - RFP;$$

(c) four-weekly payments, the total of four-weekly payments which the renter is liable to make in any 12 month period shall be calculated by reference to the formula—

$$13 - RFP$$

Where “RFP” is the number of rent free periods in the 12 month period in question.

(5) “Rent free period” means any period in respect of which the renter has no liability to make one or more of the relevant payments which are to be taken into account under paragraph 5.

#### *Room allocation*

#### **Size criteria applicable to the extended benefit unit of all renters**

7.—(1) In calculating the amount of the renter’s housing costs element under Part 4 or 5 of this Schedule, a determination is to be made in accordance with the provisions referred to in sub-paragraph (2) as to the category of accommodation which it is reasonable for the renter to occupy, having regard to the number of persons who are members of the renter’s extended benefit unit (see paragraph 8).

(2) The provisions referred to in this sub-paragraph are the following provisions of this Schedule

(a) in respect of a calculation under Part 4, paragraphs 8 to 11 and 25 to 28;

(b) in respect of a calculation under Part 5, paragraphs 8 to 11.

#### **Extended benefit unit of a renter for purposes of this Schedule**

8.—(1) For the purposes of this Schedule, the members of a renter’s extended benefit unit are—

(a) the renter (or joint renters),

(b) any child or qualifying young person for whom the renter or either joint renter is responsible, and

(c) any person who is a non-dependant.

(2) A person is a non-dependant if the person normally lives in the accommodation with the renter (or joint renters) and is none of the following—

(a) a person within sub-paragraph (1)(a) or (b);

- (b) where the renter is a member of a couple claiming as a single person, the other member of the couple;
  - (c) a foster child;
  - (d) a person who is liable to make payments on a commercial basis in respect of the person's occupation of the accommodation (whether to the renter, joint renters or another person);
  - (e) a person to whom the liability to make relevant payments is owed or a member of their household;
  - (f) a person who has already been treated as a non-dependant in relation to a claim for universal credit by another person liable to make relevant payments in respect of the accommodation occupied by the renter;
  - (g) a child or qualifying young person for whom no-one in the renter's extended benefit unit is responsible.
- (3) "Foster child" means a child in relation to whom the renter (or either joint renter) is a foster parent.

#### **Number of bedrooms to which a renter is entitled**

9.—(1) A renter is entitled to one bedroom for each of the following categories of persons in their extended benefit unit—

- (a) the renter (or joint renters);
- (b) a qualifying young person for whom the renter or either joint renter is responsible;
- (c) a non-dependant who is not a child;
- (d) two children who are under 10 years old;
- (e) two children of the same sex;
- (f) any other child.

(2) A member of the extended benefit unit to whom two or more of the descriptions in sub-paragraph (1) apply is to be allotted to whichever description results in the renter being entitled to the fewest bedrooms.

(3) In determining the number of bedrooms to which a renter is entitled, the following must also be taken into account—

- (a) the provisions of paragraph 10 as to treatment of periods of temporary absence of members of the renter's extended benefit unit;
- (b) any entitlement to an additional bedroom in accordance with paragraph 11;
- (c) for the purpose of any calculation under Part 4 of this Schedule, the additional requirement in paragraphs 25 to 28.

#### **Temporary absence of member of renter's extended benefit unit**

10.—(1) A member of the renter's extended benefit unit who is temporarily absent from the accommodation occupied by the renter is to be included in a determination of the number of bedrooms to which the renter is entitled ("relevant determination") in the circumstances specified in sub-paragraphs (2) to (4).

(2) In the case of a child or qualifying young person the circumstances specified in this sub-paragraph are that the relevant determination relates to any time—

- (a) during the first 6 months of the absence of a child or qualifying young person for whom the renter is treated as not being responsible in accordance with regulation 4(6)(a) (child or qualifying young person looked after by an authority) where, immediately before the

- authority started looking after them, the child or qualifying young person was included in the renter's extended benefit unit and the renter's award included the housing costs element,
- (b) during the first 6 months of the absence of a child or qualifying young person for whom the renter is treated as not being responsible in accordance with regulation 4(6)(b) (child or qualifying young person is a prisoner) where—
    - (i) immediately before becoming a prisoner, the child or qualifying young person was included in the renter's extended benefit unit and the renter's award included the housing costs element, and
    - (ii) the child or qualifying young person has not been sentenced to a term in custody that is expected to extend beyond that 6 months, or
  - (c) before the renter or joint renter ceases to be responsible for a temporarily absent child or qualifying young person in accordance with regulation 4(7) (absence exceeding specified duration).
- (3) In the case of a renter, the circumstances specified in this sub-paragraph are that the relevant determination relates to any time when—
- (a) the temporary absence from Northern Ireland of the renter is disregarded in accordance with regulation 11(1) or (2) (temporary absence from Northern Ireland), or
  - (b) the renter is a prisoner to whom regulation 19(2) (existing award includes housing costs when person becomes a prisoner) applies.
- (4) In the case of a non-dependant, the circumstances specified in this sub-paragraph are that—
- (a) the relevant determination relates to any time during a period specified in sub-paragraph (5),
  - (b) immediately before the start of that period, the non-dependant was included in the renter's extended benefit unit and, in the circumstances specified in sub-paragraph (5)(a) to (c), the renter's award included the housing costs element.
- (5) The specified periods are—
- (a) the first month of the non-dependant's temporary absence from Northern Ireland and, if the circumstances of the non-dependant are such as would be disregarded for the purposes of regulation 11(2) (death of a close relative), a further one month;
  - (b) the first 6 months of the non-dependant's temporary absence from Northern Ireland in the circumstances described in regulation 11(3)(a) (absence solely in connection with treatment for illness or physical or mental impairment);
  - (c) the first 6 months that the non-dependant is a prisoner where the non-dependant has not been sentenced to a term in custody that is expected to extend beyond that 6 months;
  - (d) any period during which a non-dependant who is the son, daughter, step-son or step-daughter of a renter or joint renters is a member of the armed forces away on operations.
- (6) Any non-dependant who is temporarily absent from the accommodation occupied by the renter in circumstances other than those specified in sub-paragraphs (4) and (5) is not to be treated as being a member of the renter's extended benefit unit if that absence exceeds, or is expected to exceed, 6 months.

#### **Additional room**

11.—(1) A renter is entitled to an additional bedroom if they satisfy any of the following conditions—

- (a) the overnight care condition (see sub-paragraph (3));

- (b) the foster parent condition (see sub-paragraphs (4) and (5)); or
  - (c) the disabled child condition (see sub-paragraph (6)).
- (2) Sub paragraph (1) applies subject to sub-paragraphs (7) to (9)
- (3) A renter satisfies the overnight care condition if—
- (a) they are in receipt of—
    - (i) the care component of disability living allowance at the middle or highest rate;
    - (ii) attendance allowance; or
    - (iii) the daily living component of personal independence payment;
  - (b) one or more persons who do not live in the renter’s accommodation are engaged to provide overnight care for the renter and to stay overnight in the accommodation on a regular basis; and
  - (c) overnight care is provided under arrangements entered into for that purpose.
- (4) A renter satisfies the foster parent condition if the renter is—
- (a) a foster parent; or
  - (b) an adopter with whom a child has been placed for adoption.
- (5) For the purposes of sub-paragraph (4) “foster parent” includes a person who would be a foster parent, but for the fact that they do not currently have any child placed with them, provided that any period since the date when their last placement ended (or, if they have not yet had a child placed with them, since the date when they were approved to be a foster parent) does not exceed 12 months.
- (6) A renter satisfies the disabled child condition if they or another member of their extended benefit unit are responsible for a child who would (but for the provisions of this paragraph) be expected to share a bedroom and that child is—
- (a) in receipt of the care component of disability living allowance at the middle or highest rate; and
  - (b) by virtue of their disability, not reasonably able to share a room with another child.
- (7) Where a renter, or one or both of joint renters, satisfy—
- (a) the overnight care condition; or
  - (b) the foster parent condition,
- or both, they are entitled to one additional bedroom by virtue of satisfying each condition.
- (8) Where a renter, or one or both of joint renters, satisfy the disabled child condition in relation to one or more children, they are entitled to as many additional bedrooms as are necessary to ensure that each such child has their own bedroom.
- (9) Where a renter, or one or both of joint renters, satisfy two or more of—
- (a) the overnight care condition;
  - (b) the foster parent condition; or
  - (c) the disabled child condition,
- the total number of additional bedrooms they are entitled to is determined by adding together the number of additional bedrooms which they are entitled to by virtue of satisfying each of those conditions.

## *Housing cost contributions*

### **Housing cost contributions**

12.—(1) In calculating the amount of the housing costs element under Part 4 or 5 of this Schedule, a deduction is to be made in respect of each non-dependant who is a member of the renter's extended benefit unit.

(2) Sub-paragraph (1) is subject to paragraphs 14 and 15.

(3) Any amount to be deducted under sub-paragraph (1) is referred to in this Schedule as a "housing cost contribution".

### **Amount of housing cost contributions**

13.—(1) The amount of each housing cost contribution to be deducted under paragraph 12 is £69.37.

(2) Deductions are not to be made until the amount has been determined which results from all other steps in the calculation required in relation to the renter under Parts 4 and 5 of this Schedule.

(3) Where the sum of all the housing cost contributions to be deducted in the renter's case exceeds the amount referred to in sub-paragraph (2)—

(a) the amount determined under this Schedule is to be reduced to nil; but

(b) no further reduction in respect of housing cost contributions is to be made from the renter's award.

### **Exempt renters**

14.—(1) No deduction is to be made under paragraph 12 in the case of—

(a) any renter who is a single person to whom sub-paragraph (2) applies; or

(b) any joint renter where at least one joint renter is a person to whom sub-paragraph (2) applies.

(2) This sub-paragraph applies to a person—

(a) who is blind;

(b) in receipt of the care component of disability living allowance at the middle or highest rate;

(c) in receipt of attendance allowance;

(d) in receipt of the daily living component of a personal independence payment;

(e) who is entitled to a payment within paragraph (b), (c) or (d) but is not receiving it under, as the case may be—

(i) regulation 8 of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(91),

(ii) regulation 6 of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(92),

(iii) regulation 19 of the Social Security (General Benefit) Regulations (Northern Ireland) 1984(93), or

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(91) SR. 1992 No. 32; regulation 8 was amended by regulation 3(2) of S.R. 1992 No. 481, regulation 4(2) of S.R. 1999 No. 221 and regulation 3(2) of S.R. 2000 No. 195.

(92) S.R. 1992 No. 20; regulation 6 was amended by regulation 2(2) of S.R. 1992 No. 481, regulation 3 of S.R. 1999 No. 221 and regulation 2(3) of S.R. 2000 No. 195.

(93) S.R. 1984 No. 92.

(iv) regulations under Article 91 of the Order (hospital in-patients).

### **No deduction for housing cost contributions in respect of certain non-dependants**

15.—(1) No deduction is to be made under paragraph 12 in respect of any non-dependant who is a member of the renter’s extended benefit unit to whom sub-paragraph (2) applies.

(2) This sub-paragraph applies to a person—

- (a) who is under 21 years old;
- (b) in receipt of state pension credit;
- (c) in receipt of the care component of disability living allowance at the middle or highest rate;
- (d) in receipt of attendance allowance;
- (e) in receipt of the daily living component of personal independence payment;
- (f) who is entitled to a payment within paragraph (c), (d) or (e) but is not receiving it under, as the case may be—
  - (i) regulation 8 of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992,
  - (ii) regulation 6 of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992,
  - (iii) regulation 19 of the Social Security (General Benefit) Regulations 1982, or
  - (iv) regulations under Article 91 of the Order;
- (g) in receipt of carer’s allowance;
- (h) is a prisoner;
- (i) is responsible for a child under 5 years old;
- (j) is a member of the armed forces away on operations who—
  - (i) is the son, daughter, step-son or step-daughter of a renter or joint renters, and
  - (ii) resided with the renter or joint renters immediately before leaving to go on operations and intends to return to reside with the renter or joint renters at the end of the operations.

### *Calculation involving more than one accommodation*

#### **Single calculation for renter treated as occupying single accommodation**

16.—(1) This paragraph applies to any renter where, under paragraph 3, of Schedule 3 (claimant housed in two dwellings by provider of social housing), two dwellings (“accommodation A” and “accommodation B”) occupied by a renter are treated as the single accommodation in respect of which the renter meets the occupation condition.

(2) The amount of the renter’s housing costs element is to be determined by a single calculation in respect of accommodation A and accommodation B as if they were one, taking account of—

- (a) all relevant payments in respect of accommodation A and all relevant payments in respect of accommodation B, and
  - (b) the total number of bedrooms in accommodation A and accommodation B taken together.
- (3) The single calculation is to be made under Part 5 of this Schedule in any case where—
- (a) the renter’s liability to make rent payments in respect of accommodation A and accommodation B is to a provider of social housing, and

- (b) neither accommodation A nor accommodation B is temporary accommodation within the meaning of paragraph 20.
- (4) In any other case, the single calculation is to be made under Part 4 of this Schedule.

**Calculation where move to new accommodation delayed for adaptations for disabled person**

17.—(1) Sub-paragraph (2) applies to any renter where, under paragraph 4 of Schedule 3 (moving home: adaptations to new home for disabled persons), the renter meets the occupation condition in respect of both the new accommodation and the old accommodation.

(2) The amount of the renter’s housing costs element under this Schedule is to be calculated as follows.

*Step 1*

Calculate an amount in accordance with Part 4 or Part 5 of this Schedule (as the case may be) in respect of both—

- (a) the new accommodation, and
- (b) the old accommodation.

*Step 2*

Add together the amounts determined in step 1.

*Step 3*

If a deduction was made for housing cost contributions in respect of both the new accommodation and the old accommodation, take the amount of the housing cost contributions deducted in respect of the new accommodation and add that to the amount resulting from step 2.

(3) In this paragraph, references to “the new accommodation” and “the old accommodation” are to be understood in accordance with paragraph 4 of Schedule 3.

**Calculation where renter moves out because of reasonable fear of violence**

18.—(1) Sub-paragraph (2) applies to any renter where, under paragraph 5(2) of Schedule 3, (claimant living in other accommodation because of reasonable fear of violence), the renter meets the occupation condition in respect of both the home accommodation and the other accommodation.

(2) The amount of the renter’s housing costs element under this Schedule is to be calculated as follows.

*Step 1*

Calculate an amount in accordance with Part 4 or Part 5 of this Schedule (as the case may be) in respect of—

- (a) the home accommodation, and
- (b) the other accommodation.

*Step 2*

Add together the amounts determined in step 1.

*Step 3*

If a deduction was made for housing cost contributions in respect of both the home accommodation and the other accommodation—

- (c) determine which accommodation the renter normally occupies as their home, and

(d) take the amount of the housing cost contributions deducted in respect of the accommodation not so occupied and add that to the amount resulting from step 2.

(3) In this paragraph, references to “the home accommodation” and “the other accommodation” are to be understood in accordance with paragraph 5 of Schedule 3.

## PART 4

### Private rented sector and temporary accommodation

#### Application of Part 4

19.—(1) This Part applies to—

- (a) renters who are liable to make rent payments to a person other than a provider of social housing, and
- (b) renters who meet the occupation condition in respect of temporary accommodation (see paragraph 20).

(2) Sub-paragraph (1) applies irrespective of whether renters are also liable to make service charge payments.

#### Meaning of “temporary accommodation”

20.—(1) Accommodation is temporary accommodation for the purposes of paragraph 19(1)(b) if it falls within Case 1 or 2.

(2) Case 1 is where—

- (a) rent payments are payable to the Housing Executive, and
- (b) the Housing Executive makes the accommodation available to the renter—
  - (i) to discharge any of its functions under Part II of the Housing (Northern Ireland) Order 1988<sup>(94)</sup>, or
  - (ii) to prevent the person being or becoming homeless within the meaning of Part II of that Order; and
- (c) the accommodation is not exempt accommodation.

(3) Case 2 is where—

- (a) rent payments are payable to a registered housing association,
- (b) the registered housing association makes the accommodation available to the renter in pursuance of arrangements made with it by the Housing Executive—
  - (i) to discharge any of the Housing Executive’s functions under Part II of the Housing (Northern Ireland) Order 1988, or
  - (ii) to prevent the renter being or becoming homeless within the meaning of Part II of that Order, and
- (c) the accommodation is not exempt accommodation.

(4) Sub-paragraph (1) applies irrespective of whether the renter is also liable to make service charge payments.

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<sup>(94)</sup> S.I. 1988/1990 (N.I. 23).

*The calculation of the housing costs element under this Part*

**The amount of housing costs element under this Part**

21. The amount of the renter's housing costs element under this Part is to be calculated as follows.

*Step 1*

Determine—

- (a) the amount of the renter's core rent, and
- (b) the amount of the renter's cap rent,

and identify which is the lower amount (if both amounts are the same, that is the identified amount).

*Step 2*

Deduct the sum of the housing cost contributions (if any) under paragraph 12 from the amount identified in step 1.

The result is the amount of the renter's housing costs element calculated under this Part.

**Core rent**

22. Except where paragraph 23 applies, the renter's core rent is to be determined as follows—

*Step 1*

Determine the amount of each relevant payment to be taken into account under paragraph 5.

*Step 2*

Determine the period in respect of which each relevant payment is payable and, in accordance with paragraph 6, determine the amount of the payment in respect of a month.

*Step 3*

If there is more than one relevant payment, add together the amounts determined in step 2 in relation to all relevant payments.

The result is the renter's core rent.

**Core rent for joint tenants**

23.—(1) This paragraph applies where, in respect of the accommodation occupied by the renter, one or more persons other than the renter are liable to make relevant payments which are of the same description as those for which the renter is liable and which are to be taken into account under paragraph 5.

(2) The following steps are to be taken in order to determine the renter's core rent.

*Step 1*

Determine the total of all relevant payments referred to in sub-paragraph (1) for which the renter and others are liable in respect of the accommodation taken as a whole.

*Step 2*

Determine the period in respect of which each relevant payment is payable and, in accordance with paragraph 6, determine the amount of the payment in respect of a month.

*Step 3*

Add together all of the amounts determined in step 2 in relation to all relevant payments.

*Step 4*

Find the allocated amount in accordance with whichever of sub-paragraphs (3) to (5) applies in the renter's case.

The result is the renter's core rent.

(3) Where the only persons liable to make relevant payments are listed persons, the allocated amount is the amount resulting from step 3 in sub-paragraph (2).

(4) Where the persons liable for the relevant payments are one or more listed persons and one or more other persons, the allocated amount is to be found by applying the formula—

$$\left(\frac{A}{B}\right) \times C$$

where—

“A” is the amount resulting from step 3 in sub-paragraph (2),

“B” is the total number of all persons (including listed persons) liable to make the relevant payments, and

“C” is the number of listed persons liable to make relevant payments.

(5) If the Department is satisfied that it would be unreasonable to allocate the amount resulting from step 3 in sub-paragraph (2) in accordance with sub-paragraph (4), that amount is to be allocated in such manner as it considers appropriate in all the circumstances, having regard (among other things) to the number of persons liable and the proportion of the relevant payments for which each of them is liable.

**Cap rent**

24.—(1) The renter's cap rent is to be determined as follows.

*Step 1*

Determine the category of accommodation to which the renter is entitled under paragraphs 7 to 11 and paragraphs 25 to 28.

*Step 2*

Having regard to the determination at step 1, determine the maximum allowable amount for the renter under sub-paragraph (2) or (4) (as the case may be).

The result is the renter's cap rent.

(2) The maximum allowable amount to be used in relation to the renter is the local housing allowance which applies at the relevant time to—

- (a) the broad rental market area in which the renter's accommodation is situated, and
- (b) the category of accommodation determined at step 1 as that to which the renter is entitled.

(3) The maximum allowable amount in relation to the renter is to be determined under sub-paragraph (4) in any case where—

- (a) paragraph 3 (claimant housed in two dwellings by provider of social housing) of Schedule 3 applies to the renter, and
- (b) the maximum allowable amount determined under sub-paragraph (2) for the renter in relation to accommodation A and the amount so determined in relation to accommodation B are different (references to accommodation A and accommodation B are to be understood in accordance with paragraph 3 of Schedule 3), and

- (c) a single calculation is to be made in relation to the renter under paragraph 16 (renter treated as occupying single accommodation).
- (4) In any such case, the maximum allowable amount to be used in making the single calculation required by paragraph 16—
  - (a) is to be determined by reference to the accommodation for which the amount referred to in sub-paragraph (3)(b) is lower when the calculation is first made, and
  - (b) is to continue to be determined by reference to that accommodation for so long as paragraph 3 of Schedule 3 applies to the renter in respect of the same accommodation A and the same accommodation B, and
  - (c) is to be re-determined in accordance with paragraphs (a) and (b) on each occasion when the renter is re-housed in any other accommodation, provided that paragraph 3 of Schedule 3 continues to apply to the renter.
- (5) In this paragraph—
  - “broad rental market area” means the broad rental market area to be determined under regulation 3 of the UC Housing Costs Regulations;
  - “local housing allowance” in relation to a broad rental market area, means the amount to be determined by a rent officer for that area under regulation 4 of the UC Housing Costs Regulations;
  - “relevant time” means the time at which the amount of the renter’s housing costs element is calculated under paragraph 21.

*Further provisions about size criteria for cases to which this Part applies*

**Four bedroom limit**

25. In calculating the amount of a renter’s housing costs element under paragraph 21, no renter is entitled to more than 4 bedrooms.

**Specified renters entitled to shared accommodation only**

26.—(1) In calculating the amount of a renter’s housing costs element under paragraph 21, any specified renter (within the meaning of paragraph 27) is entitled to shared accommodation only.

(2) “Shared accommodation” means the category of accommodation specified in paragraph 1(a) of Schedule 1 to the UC Housing Costs Regulations.

**Meaning of “specified renters”**

27.—(1) For the purposes of paragraph 26 “specified renter” means a renter in respect of whom all of the following conditions are met.

(2) The first condition is that the renter is a single person (or a member of a couple claiming as a single person) who—

- (a) is under 35 years old, and
- (b) is not an excepted person under paragraph 28.

(3) The second condition is that the renter is not responsible for any children or qualifying young persons.

(4) The third condition is that no person is a non-dependant in relation to the renter.

### **Renters excepted from shared accommodation**

28.—(1) “Excepted person” means any renter (“E”) who falls within any of sub-paragraphs (2) to (5).

(2) E is at least 18 but under 22 years old and was a care leaver (within the meaning of regulation 8) before reaching the age of 18.

(3) E is at least 25 but under 35 years old and—

- (a) has, for a total of at least 3 months (whether or not continuously), lived in one or more hostels for homeless people, and
- (b) whilst E was living in such a hostel, was offered and has accepted support services which the Department considers are intended to assist E to be rehabilitated or resettled within the community.

(4) E is under 35 years old and is in receipt of—

- (a) the care component of disability living allowance at the middle or highest rate;
- (b) attendance allowance, or
- (c) the daily living component of personal independence payment.

(5) E is under 35 years old and he is the subject of risk management pursuant to arrangements established under Part 3 of the Criminal Justice (Northern Ireland) Order 2008(95)

(6) In this paragraph—

“care home”, “registered charity” and “voluntary organisation” have the meaning given in Schedule 1;

“hostel” means a building—

- (a) in which there is provided, for persons generally or for a class of persons, domestic accommodation, otherwise than in separate and self-contained premises, and either board or facilities for the preparation of food adequate to the needs of those persons, or both;
- (b) which is—
  - (i) managed or owned by a registered housing association,
  - (ii) operated other than on a commercial basis and in respect of which funds are provided wholly or in part by a government department or agency, the Housing Executive or a Regional Health and Social Care Board or Health and Social Care Trust, or
  - (iii) managed by a voluntary organisation or registered charity and provides care, support or supervision with a view to assisting those persons to be rehabilitated or resettled within the community, and

(c) which is not a care home;

“hostel for homeless people” means a hostel the main purpose of which is to provide accommodation together with care, support or supervision for homeless people with a view to assisting such persons to be rehabilitated or resettled within the community.

## PART 5

### Social rented sector other than temporary accommodation

#### Application of Part 5

- 29.—(1) This Part—
- (a) applies to renters who are liable to make rent payments to a provider of social housing; but
  - (b) does not apply to any renter who falls within paragraph 19(1)(b) (temporary accommodation).
- (2) Sub-paragraph (1) applies irrespective of whether renters are also liable to make service charge payments.

#### *Reduction in certain cases of amounts to be taken into account*

#### Deduction from relevant payments of amounts relating to use of particular accommodation

30. In determining the amount of any relevant payment to be taken into account under paragraph 5, a deduction is to be made for any amount which the Department is satisfied—
- (a) is included in the relevant payment, but
  - (b) relates to the supply to the accommodation of a commodity (such as water or fuel) for use by any member of the renter’s extended benefit unit.

#### Relevant payments excessive

31. Where it appears to the Department that—
- (a) the amount of any relevant payment for which the renter is liable in respect of accommodation occupied by the renter is greater than it is reasonable to meet by way of the housing costs element under this Part, and
  - (b) the amount of the relevant payment that, at the time of the calculation under this Part, a landlord might reasonably have expected to obtain is a lower amount,
- the lower amount is to be used in making the calculation under this Part instead of the amount of the relevant payment for which the renter is liable, unless the Department is satisfied that it is not appropriate to use that lower amount.

#### *The calculation of the housing costs element under this Part*

#### The amount of housing costs element

- 32.—(1) The amount of the renter’s housing costs element under this Part is to be calculated by reference to the formula—

$$S - HCC$$

where—

- “S” is the amount resulting from whichever of paragraph 33 or 34 applies in the renter’s case,
- “HCC” is the sum of the housing cost contributions (if any) under paragraph 12.

### **Determining the amount from which HCC deductions are to be made**

33. Except where paragraph 34 applies, amount S referred to in paragraph 32 is to be found as follows—

#### *Step 1*

Determine which relevant payments are to be taken into account under paragraph 5 and determine the amount of each of them (applying paragraphs 30 and 31 as necessary).

#### *Step 2*

Determine the period in respect of which each relevant payment is payable and, in accordance with paragraph 6, determine the amount of the payment in respect of a month.

#### *Step 3*

If there is more than one relevant payment, add together the amounts determined in step 2 in relation to all relevant payments.

#### *Step 4*

Determine under paragraph 35(1) whether an under-occupation deduction is to be made and, if one is to be made, determine the amount of the deduction under paragraph 35(2) and deduct it from the amount resulting from step 2 or 3 (as the case may be).

The result is amount S from which the sum of the housing cost contributions are to be deducted under paragraph 32.

### **Determining the amount from which HCC deductions are to be made: joint tenants**

34.—(1) This paragraph applies where, in respect of the accommodation occupied by the renter, one or more persons other than the renter is liable to make relevant payments which are of the same description as those for which the renter is liable and which are to be taken into account under paragraph 5.

(2) Amount S referred to in paragraph 32 is to be found as follows.

#### *Step 1*

Determine the total of all relevant payments referred to in sub-paragraph (1) for which the renter and others are liable in respect of the accommodation taken as a whole (applying paragraphs 30 and 31 as necessary).

#### *Step 2*

Determine the period in respect of which each relevant payment is payable and, in accordance with paragraph 6, determine the amount of the payment in respect of a month.

#### *Step 3*

Add together all of the amounts determined in step 2 in relation to all relevant payments.

#### *Step 4*

Find amount S in accordance with whichever of sub-paragraphs (3) to (5) applies in the renter's case. The result is amount S from which the sum of the housing cost contributions are to be deducted under paragraph 32.

(3) Where the only persons liable to make relevant payments are listed persons, amount S is the amount resulting from step 3 in sub-paragraph (2) less the amount of the under-occupation deduction (if any) required by paragraph 35.

(4) Where the persons liable for the relevant payments are one or more listed persons and one or more other persons, amount S is to be found by the applying the formula—

$$\left(\frac{A}{B}\right) \times C$$

where—

“A” is the amount resulting from step 3 in sub-paragraph (2),

“B” is the total number of all persons (including listed persons) liable to make the relevant payments, and

“C” is the number of listed persons.

(5) If the Department is satisfied that it would be unreasonable to determine amount S in accordance with sub-paragraph (4), amount S is to be determined in such manner as the Department considers appropriate in all the circumstances, having regard (among other things) to the number of persons liable and the proportion of the relevant payments for which each of them is liable.

### **Under-occupancy deduction**

35.—(1) A deduction for under-occupancy is to be made under this paragraph where the number of bedrooms in the accommodation exceeds the number of bedrooms to which the renter is entitled under paragraphs 7 to 11.

(2) Where a deduction is to be made, the amount of the deduction is to be determined by the formula—

$$A \times B$$

where—

“A”—

(a) in relation to any deduction under paragraph 33, is the amount resulting from step 2 or 3 in that paragraph (as the case may be), or

(b) in relation to any deduction under paragraph 34(3), is the amount resulting from step 3 in paragraph 34(2);

“B” is the relevant percentage.

(3) The relevant percentage is 14% in the case of one excess bedroom.

(4) The relevant percentage is 25% in the case of 2 or more excess bedrooms.

(5) No deduction for under-occupation is to be made in calculating the amount of the renter’s housing costs element under this Part in any case to which regulation 27(4) to (6) (equity-sharing lease) applies.

SCHEDULE 5

Regulation 27(3)

Housing costs element for owner-occupiers

**PART I**

**General**

**Definition of Owner-occupier**

1.—(1) This Schedule contains provisions about claimants to whom regulation 27(3) applies.

(2) Claimants who fall within sub-paragraph (1) are referred to in this Schedule as “owner-occupiers” (and references to “joint owner-occupiers” are to joint claimants to whom regulation 27(3) applies).

**Interpretation**

2. In this Schedule—

“alternative finance arrangements” has the meaning as given in paragraph 7(2) of Schedule 1;

“alternative finance payments” has the meaning given in paragraph 7 of Schedule 1;

“joint owner-occupier” has the meaning given in paragraph 1(2);

“loan interest payments” has the meaning given in paragraph 6 of Schedule 1;

“owner-occupier” means a single owner-occupier within the meaning of paragraph 1(2) or each of joint owner-occupiers;

“qualifying period” has the meaning given in paragraph 5(2);

“relevant date” means, in relation an owner-occupier, the date on which an amount of housing costs element calculated under this Schedule is first included in the owner occupier’s award;

“relevant payments” has the meaning given in paragraph 3;

“standard rate” has the meaning given in paragraph 12.

**Relevant payment for the purposes of this schedule**

3.—(1) “Relevant payments” means one or more payments of any of the following descriptions—

(a) owner-occupier payments;

(b) service charge payments.

(2) “Owner-occupier payments” has the meaning given in paragraph 5 of Schedule 1.

(3) “Service charge payments” is to be understood in accordance with paragraphs 8 and 9 of that Schedule.

**PART 2**

**Exception to inclusion of housing costs element**

**No housing costs element where owner-occupier has any earned income**

4.—(1) Article 16(1) of the Order (housing costs) does not apply to any owner-occupier in relation to an assessment period where—

- (a) the owner-occupier has any earned income, or
  - (b) if the owner-occupier is a member of a couple, either member of the couple has any earned income.
- (2) Sub-paragraph (1) applies irrespective of the nature of the work engaged in, its duration or the amount of the earned income.
- (3) Nothing in this paragraph prevents an amount calculated under Schedule 4 from being included in the award of any claimant who falls within regulation 27(4) to (6) (equity-sharing lease).

## PART 3

### No housing costs element for qualifying period

#### **No housing costs element under this Schedule for qualifying period**

5.—(1) An owner-occupier's award of universal credit is not to include any amount of housing costs element calculated under this Schedule until the beginning of the assessment period that follows the assessment period in which the qualifying period ends.

- (2) "Qualifying period" means a period of—
- (a) in the case of a new award, 9 consecutive assessment periods in relation to which—
    - (i) the owner-occupier has been receiving universal credit, and
    - (ii) would otherwise qualify for the inclusion of an amount calculated under this Schedule in their award;
  - (b) in any case where an amount calculated under this Schedule has for any reason ceased to be included in the award, 9 consecutive assessment periods in relation to which the owner-occupier would otherwise qualify for the inclusion of an amount calculated under this Schedule in their award.
- (3) Where, before the end of a qualifying period, an owner-occupier for any reason ceases to qualify for the inclusion of an amount calculated under this Schedule—
- (a) that qualifying period stops running, and
  - (b) a new qualifying period starts only when the owner-occupier again meets the requirements of sub-paragraph (2)(a) or (b).

#### **Application of paragraph 5: receipt of JSA and ESA**

6.—(1) This paragraph applies to any owner-occupier who immediately before the commencement of an award of universal credit is entitled to—

- (a) a jobseeker's allowance, or
- (b) an employment and support allowance.

(2) In determining when the qualifying period in paragraph 5 ends in relation to the owner-occupier, any period that comprises only days on which the owner-occupier was receiving a benefit referred to in sub-paragraph (1) may be treated as if it were the whole or part of one or more assessment periods, as determined by the number of days on which any such benefit was received.

#### **Application of paragraph 5: joint owner-occupiers ceasing to be a couple**

7.—(1) This paragraph applies where—

- (a) an award of universal credit to joint owner-occupiers is terminated because they cease to be a couple, and
- (b) a further award is made to one of them (or to each of them), and
- (c) in relation to the further award (or in relation to each further award), the occupation condition is met in respect of the same accommodation as that occupied by the joint owner-occupiers as their home.

(2) In determining when the qualifying period in paragraph 5 ends in relation to the further award (or each further award), the whole or part of any assessment period which would have counted in relation to the award that is terminated is to be carried forward and taken into account in relation to the further award (or each further award).

(3) But where, immediately before the joint owner-occupier's award was terminated, an amount of housing costs element calculated under this Schedule was already included in the award; no qualifying period under paragraph 5 applies to the owner-occupier in relation to the commencement of the further award (or each further award).

(4) For the purposes of sub-paragraph (1)(b), it is irrelevant whether the further award—

- (a) is made on a claim, or
- (b) by virtue of regulation 9(6) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016 is made without a claim.

## PART 4

### Calculation of amount of housing costs element for owner-occupiers

#### **Payments to be taken into account**

8.—(1) Where an owner-occupier meets the payment condition, liability condition and occupation condition in respect of one or more relevant payments and the qualifying period has ended, each of the relevant payments is to be taken into account for the purposes of the calculation under this Part.

(2) No account is to be taken of any amount of a relevant payment to the extent that the conditions referred to in sub-paragraph (1) are not met in respect of that amount.

(3) Any particular payment for which an owner-occupier is liable is not to be brought into account more than once, whether in relation to the same or a different owner-occupier (but this does not prevent different payments of the same description being brought into account in respect of an assessment period).

#### **The amount of a housing costs element**

9. The amount of the owner-occupier's housing costs element under this Schedule is the aggregate of the amounts resulting from paragraphs 10, 11 and 13 in respect of all relevant payments which are to be taken into account under paragraph 8.

#### **Amount in respect of interest on loans**

10.—(1) This paragraph provides for the calculation of the amount to be included in the owner-occupier's housing costs element under this Schedule in respect of relevant payments which are loan interest payments.

(2) Subject to sub-paragraphs (3) to (5), the amount in respect of the loan or loans to which the payments relate is to be calculated as follows.

*Step 1*

Determine the amount of the capital for the time being owing in connection with each loan.

*Step 2*

If there is more than one loan, add together the amounts determined in Step 1.

*Step 3*

Identify which is the lower of these 2 amounts—

- (a) the amount resulting from Step 1 or 2 (as the case may be), and
- (b) £200,000,

and, if both amounts are the same, that is the identified amount.

*Step 4*

Apply the formula—

$$\frac{(A \times SR)}{12}$$

where—

“A” is the amount resulting from Step 3,

“SR” is the standard rate that applies at the date of the determination (see paragraph 12).

The result is the amount to be included under this Schedule in respect of loan interest payments.

(3) In the application of sub-paragraph (2) to a loan (or any part of a loan) which was taken out for the purpose of making necessary adaptations to the accommodation to meet the disablement needs of a person specified in paragraph 4(3) of Schedule 3—

- (a) the loan (or the part of the loan) is to be disregarded for the purposes of steps 2 and 3, and
- (b) “A” in step 4 is to be read as the amount resulting from step 1 in respect of the loan (or the sum of those amounts if there is more than one loan taken out for the purpose of making such adaptations) plus the amount (if any) resulting from step 3 in relation to any other loan or loans.

(4) Any variation in the amount of capital for the time being owing in connection with a loan is not to be taken into account after the relevant date until such time as the Department recalculates the amount under this Schedule by reference to the amount of capital owing in connection with the loan—

- (a) on the first anniversary of the relevant date, or
- (b) in respect of any variation after the first anniversary, on the next anniversary which follows the date of the variation.

### **Amount in respect of alternative finance arrangements**

11.—(1) This paragraph provides for the calculation of the amount to be included in the owner-occupier’s housing costs element under this Schedule in respect of relevant payments which are alternative finance payments.

(2) The amount in respect of the alternative finance arrangements to which the payments relate is to be calculated as follows—

*Step 1*

Determine the purchase price of the accommodation to which the alternative finance payments relate.

*Step 2*

Identify which is the lower of these 2 amounts—

- (a) the amount resulting from Step 1, and
- (b) £200,000,

and, if both amounts are the same, that is the identified amount.

*Step 3*

Apply the formula—

$$\frac{(A \times SR)}{12}$$

where—

“A” is the amount resulting from step 2,

“SR” is the standard rate that applies at the date of the calculation (see paragraph 12).

The result is the amount to be included under this Schedule in respect of alternative finance payments.

(3) “Purchase price” means the price paid by a party to the alternative financial arrangements other than the owner-occupier in order to acquire the interest in the accommodation to which those arrangements relate less—

- (a) the amount of any initial payment made by the owner-occupier in connection with the acquisition of that interest, and
- (b) the amount of any subsequent payments made by the owner-occupier before the relevant date to another party to the alternative finance arrangements which reduced the amount owned by the owner-occupier under the alternative finance arrangements.

(4) Any variation in the amount for the time being owing in connection with alternative finance arrangements is not to be taken into account after the relevant date until such time as the Department recalculates the amount under this Schedule by reference to the amount that is owing in connection with the alternative finance arrangements—

- (a) on the first anniversary of the relevant date, or
- (b) in respect of any variation after the first anniversary, or the next anniversary which follows the date of the variation.

**Standard rate to be applied under paragraphs 10 and 11**

12.—(1) The standard rate is the average mortgage rate published by the Bank of England which, immediately before this Schedule comes into operation, has effect for the purposes of paragraph 12 of Schedule 3 to the Income Support (General) Regulations (Northern Ireland) 1987<sup>(96)</sup> (which makes provision as to the standard rate to be used in determining amounts applicable to a claimant in respect of income support).

(2) The standard rate is to be varied each time that sub-paragraph (3) applies.

(3) This sub-paragraph applies when, on any reference day, the Bank of England publishes an average mortgage rate which differs by 0.5 percentage points or more from the standard rate that

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<sup>(96)</sup> Paragraph 12 was amended by regulation 2(c) of S.R. 2004 No. 461; regulation 2(3)(c)(ii) of S.R. 2007 No. 475; regulation 2(2)(b) of S.R. 2008 No. 503 and regulation 2(2) of S.R. 2010 No. 340.

applies on that reference day (whether it applies by virtue of sub-paragraph (1) or by virtue of a previous application of this sub-paragraph).

(4) The average mortgage rate published on that reference day then becomes the new standard rate in accordance with sub-paragraph (5).

(5) Any variation in the standard rate by virtue of sub-paragraphs (2) to (4) comes into effect—

(a) for the purposes of sub-paragraph (3), the day after the reference day referred to in sub-paragraph (4);

(b) for the purpose of calculating the amount of the housing costs element to be included under this Schedule in an owner-occupier's award, on the day specified by the Department for that purpose.

(6) At least 7 days before a variation of the standard rate comes into effect under sub-paragraph (5) (b), the Department must arrange for notice to be published on a publicly accessible website of—

(a) the new standard rate; and

(b) the day specified in relation to that rate under sub-paragraph (5)(b).

(7) In this paragraph—

“average mortgage rate” means the effective interest rate (non-seasonally adjusted) of United Kingdom resident banks and building societies for loans to households secured on dwellings published by the Bank of England in respect of the most recent period specified for that rate at the time of publication<sup>(97)</sup>;

“reference day” means any day falling on or after the date on which this Schedule comes into operation.

### **Amount in respect of service charge payments**

13.—(1) This paragraph provides for the calculation of the amount to be included in the owner-occupier's housing costs element under this Schedule in respect of relevant payments which are service charge payments.

(2) The amount in respect of the service charge payments is to be calculated as follows.

#### *Step 1*

Determine the amount of each service charge payment.

#### *Step 2*

Determine the period in respect of which each service charge payment is payable and, determine the amount of the payment in respect of a month (see sub-paragraphs (3) and (4)).

#### *Step 3*

If there is more than one service charge payment, add together the amounts determined in step 2.

The result is the amount to be included under this Schedule in respect of service charge payments.

(3) Where the period in respect of which an owner-occupier is liable to make a service charge payment is not a month, an amount is to be calculated as the monthly equivalent, so for example—

(a) weekly payments are multiplied by 52 and divided by 12,

(b) two-weekly payments are multiplied by 26 and divided by 12,

(c) four-weekly payments are multiplied by 13 and divided by 12,

(d) three-monthly payments are multiplied by 4 and divided by 12, and

<sup>(97)</sup> This is available on the Bank of England website: <http://www.bankofengland.co.uk/statistics/bankstats/current/index.htm>. The effective rate appears in Table G1.4 in the column headed “HSDE”.

(e) annual payments are divided by 12.

(4) Where an owner-occupier is liable for service charge payments under arrangements that provide for one or more service charge free periods, subject to sub-paragraph (5) the monthly equivalent is to be calculated over 12 months by reference to the total number of service charge payments which the owner-occupier is liable to make in that 12 month period.

(5) Where sub paragraph (4) applies and the service charge payments in question are-

(a) weekly payments, the total number of weekly service charge payments which the owner-occupier is liable to make in any 12 month period shall be calculated by reference to the formula—

$$52 - SCFP;$$

(b) two-weekly payments, the total number of two-weekly service charge payments which the owner-occupier is liable to make in any 12 month period shall be calculated by reference to the formula-

$$26 - SCFP;$$

(c) four-weekly payments, the total number of four-weekly service charge payments which the owner-occupier is liable to make in any 12 month period shall be calculated by reference to the formula-

$$13 - SCFP$$

where “SCFP” is the number of service charge free periods in the 12 month period in question.

(6) “Service charge free period” means any period in respect of which the owner-occupier has no liability to make one or more of the service charge payments which are to be taken into account under paragraph 8.

## SCHEDULE 6

Regulation 40(2) and (3)

### Assessment of whether a claimant has limited capability for work

## PART I

### Physical disabilities

**Table 1**

<i>Activity 1</i>	<i>Descriptors 2</i>	<i>Points</i>
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally or could reasonably be worn or used.	1(a) Cannot, unaided by another person, either: <ul style="list-style-type: none"> <li>(i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or</li> <li>(ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.</li> </ul>	15

<i>Activity1</i>	<i>Descriptors 2</i>	<i>Points</i>
	(b) Cannot, unaided by another person, mount or descend 2 steps even with the support of a handrail.	9
	(c) Cannot, unaided by another person, either — <ul style="list-style-type: none"> <li>(i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or</li> <li>(ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.</li> </ul>	9
	(d) Cannot, unaided by another person, either — <ul style="list-style-type: none"> <li>(i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or</li> <li>(ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.</li> </ul>	6
	(e) None of the above applies.	0
2. Standing and sitting.	2(a) Cannot move between one seated position and another seated position which are located next to one another without receiving physical assistance from another person.	15
	(b) Cannot, for the majority of the time, remain at a work station: <ul style="list-style-type: none"> <li>(i) standing unassisted by another person (even if free to move around),</li> <li>(ii) sitting (even in an adjustable chair); or</li> <li>(iii) a combination of paragraphs (i) and (ii),</li> </ul> for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion.	9
	(c) Cannot, for the majority of the time, remain at a work station— <ul style="list-style-type: none"> <li>(i) standing unassisted by another person (even if free to move around),</li> </ul>	6

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<i>Activity 1</i>	<i>Descriptors 2</i>	<i>Points</i>
	<p>(ii) sitting (even in an adjustable chair); or</p> <p>(iii) a combination of paragraphs (i) and (ii),</p> <p>for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.</p> <p>(d) None of the above applies.</p>	0
3. Reaching.	<p>3(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.</p> <p>(b) Cannot raise either arm to top of head as if to put on a hat.</p> <p>(c) Cannot raise either arm above head height as if to reach for something.</p> <p>(d) None of the above applies.</p>	15 9 6 0
4. Picking up and moving or transferring by the use of the upper body and arms.	<p>4(a) Cannot pick up and move a 0.5 litre carton full of liquid.</p> <p>(b) Cannot pick up and move a one litre carton full of liquid.</p> <p>(c) Cannot transfer a light but bulky object such as an empty cardboard box.</p> <p>(d) None of the above applies.</p>	15 9 6 0
5. Manual dexterity.	<p>5(a) Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.</p> <p>(b) Cannot pick up a £1 coin or equivalent with either hand.</p> <p>(c) Cannot use a pen or pencil to make a meaningful mark with either hand.</p> <p>(d) Cannot single-handedly use a suitable keyboard or mouse.</p> <p>(e) None of the above applies.</p>	15 15 9 9 0
6. Making self understood through speaking, writing, typing, or other means which are normally or could reasonably be used, unaided by another person.	<p>6(a) Cannot convey a simple message, such as the presence of a hazard.</p> <p>(b) Has significant difficulty conveying a simple message to strangers.</p> <p>(c) Has some difficulty conveying a simple message to strangers.</p> <p>(d) None of the above applies.</p>	15 15 6 0

<i>Activity1</i>	<i>Descriptors 2</i>	<i>Points</i>
7. Understanding communication by:  (i) verbal means (such as hearing or lip reading) alone,  (ii) non-verbal means (such as reading 16 point print or Braille) alone, or  (iii) a combination of sub-paragraphs (i) and (ii),  using any aid that is normally or could reasonably be used, unaided by another person.	7(a) Cannot understand a simple message, such as the location of a fire escape, due to sensory impairment.	15
	(b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment.	15
	(c) Has some difficulty understanding a simple message from a stranger due to sensory impairment.	6
	(d) None of the above applies	0
8. Navigation and maintaining safety using a guide dog or other aid if either or both are normally used or could reasonably be used.	8(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15
	(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15
	(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
	(d) None of the above applies.	0
9. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting), despite the wearing or use of any aids or adaptations which are normally or could reasonably be worn or used.	9(a) At least once a month experiences:  (i) loss of control leading to extensive evacuation to the bowel and/or voiding of the bladder, or  (ii) substantial leakage of the contents of a collecting device,  sufficient to require cleaning and a change in clothing.	15
	(b) The majority of the time is at risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.	6
	(c) Neither of the above applies.	0
10. Consciousness during waking moments.	10(a) At least once a week, has an involuntary episode of lost or altered	15

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<i>Activity 1</i>	<i>Descriptors 2</i>	<i>Points</i>
	consciousness resulting in significantly disrupted awareness or concentration.	
	(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
	(c) Neither of the above applies.	0

## PART 2

### Mental, cognitive and intellectual function assessment

<i>(1) Activity</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
11. Learning tasks.	11(a) Cannot learn how to complete a simple task, such as setting an alarm clock.	15
	(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
	(c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
	(d) None of the above applies.	0
12. Awareness of everyday hazards (such as boiling water or sharp objects).	12(a) Reduced awareness of everyday hazards leads to a significant risk of: <ul style="list-style-type: none"> <li>(i) injury to self or others, or</li> <li>(ii) damage to property or possessions, such that the claimant requires supervision for the majority of the time to maintain safety.</li> </ul>	15
	(b) Reduced awareness of everyday hazards leads to a significant risk of: <ul style="list-style-type: none"> <li>(i) injury to self or others, or</li> <li>(ii) damage to property or possessions, such that the claimant frequently requires supervision to maintain safety.</li> </ul>	9
	(c) Reduced awareness of everyday hazards leads to a significant risk of : <ul style="list-style-type: none"> <li>(i) injury to self or others, or</li> <li>(ii) damage to property or possessions,</li> </ul>	6

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
	such that the claimant frequently requires supervision to maintain safety.  (d) None of the above applies.	0
13. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	13(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.  (b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions for the majority of the time.  (c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.  (d) None of the above applies.	15  9  6  0
14. Coping with change.	14(a) Cannot cope with any change to the extent that day to day life cannot be managed.  (b) Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.  (c) Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that, overall, day to day life is made significantly more difficult.  (d) None of the above applies.	15  9  6  0
15. Getting about.	15(a) Cannot get to any place outside the claimant's home with which the claimant is familiar.  (b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.  (c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.  (d) None of the above applies.	15  9  6  0
16. Coping with social engagement due to cognitive impairment or mental disorder.	16(a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant.  (b) Engagement in social contact with someone unfamiliar to the claimant is always	15  9

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<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
	precluded due to difficulty relating to others or significant distress experienced by the claimant.	
	(c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the claimant.	6
	(d) None of the above applies.	0
17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	17(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
	(d) None of the above applies.	0

## SCHEDULE 7

Regulation 41(2) and (3)

Assessment of whether a claimant has limited capability for work and work-related activity

<i>Activity</i>	<i>Descriptors</i>
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally or could reasonably be worn or used.	1 Cannot either: (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.
2. Transferring from one seated position to another.	2 Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.
3. Reaching.	3 Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or	4 Cannot pick up and move a 0.5 litre carton full of liquid.

<i>Activity</i>	<i>Descriptors</i>
kneeling and all other activities specified in this Schedule).	
5. Manual dexterity.	5 Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.
6. Making self understood through speaking, writing, typing, or other means which are normally, or could reasonably be, used unaided by another person.	6 Cannot convey a simple message, such as the presence of a hazard.
7. Understanding communication by— (i) verbal means (such as hearing or lip reading) alone, (ii) non verbal means (such as reading 16 point print or Braille) alone, or (iii) a combination of subparagraphs (i) and (ii), using any aid that is normally or could reasonably, be used unaided by another person.	7 Cannot understand a simple message, such as the location of a fire escape, due to sensory impairment.
8. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the wearing or use of any aids or adaptations which are normally or could reasonably be worn or used.	8 At least once a week experiences— (a) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, or (b) substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.
9. Learning tasks.	9 Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.
10. Awareness of hazard.	10 Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of: (a) injury to self or others, or (b) damage to property or possessions, such that the claimant requires supervision for the majority of the time to maintain safety.
11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.

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<i>Activity</i>	<i>Descriptors</i>
12. Coping with change.	12 Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.
13. Coping with social engagement, due to cognitive impairment or mental disorder.	13 Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant.
14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	14 Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.
15. Conveying food or drink to the mouth.	<p>15(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else,</p> <p>(b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping or experiencing breathlessness or severe discomfort,</p> <p>(c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence, or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving—</p> <p style="padding-left: 40px;">(i) physical assistance from someone else, or</p> <p style="padding-left: 40px;">(ii) regular prompting given by someone else in the claimant's presence.</p>
16. Chewing or swallowing food or drink.	<p>16 (a) Cannot chew or swallow food or drink;</p> <p>(b) Cannot chew or swallow food or drink without repeatedly stopping or experiencing breathlessness or severe discomfort,</p> <p>(c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence, or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to:</p> <p style="padding-left: 40px;">(i) chew or swallow food or drink, or</p> <p style="padding-left: 40px;">(ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.</p>

## SCHEDULE 8

Regulation 40(6)

Circumstances in which a claimant is to be treated as having limited capability for work

### *Receiving certain treatments*

1. The claimant is receiving—
  - (a) regular weekly treatment by way of haemodialysis for chronic renal failure,
  - (b) treatment by way of plasmapheresis, or
  - (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function,

or recovering from any of those forms of treatment in circumstances in which the Department is satisfied that the claimant should be treated as having limited capability for work.

### *In hospital*

- 2.—(1) The claimant is—
  - (a) undergoing medical or other treatment as a patient in a hospital or similar institution, or
  - (b) recovering from such treatment in circumstances in which the Department is satisfied that the claimant should be treated as having limited capability for work.
- (2) The circumstances in which a claimant is to be regarded as undergoing treatment falling within sub-paragraph (1)(a) include where the claimant is attending a residential programme of rehabilitation for the treatment of drug or alcohol dependency.
- (3) For the purposes of this paragraph, a claimant is to be regarded as undergoing treatment as a patient in a hospital or similar institution only if that claimant has been advised by a health care professional to stay for a period of 24 hours or longer following medical or other treatment.

### *Prevented from working by law*

- 3.—(1) The claimant—
    - (a) is excluded or abstains from work pursuant to a request or notice in writing lawfully made or given under a statutory provision, or
    - (b) is otherwise prevented from working pursuant to a statutory provision,
- by reason of it being known or reasonably suspected that the claimant is infected or contaminated by, or has been in contact with a case of, a relevant infection or contamination.
- (2) In sub-paragraph (1) “relevant infection or contamination” means—
    - (i) infectious disease within the meaning of section 32 of the Public Health Act (Northern Ireland) 1967<sup>(98)</sup> (interpretation), or
    - (ii) contamination within the meaning of section 2A(1A)<sup>(99)</sup> of that Act.

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<sup>(98)</sup> 1967 c. 36

<sup>(99)</sup> Section 2A(1A) was inserted by section 1(3) of the Public Health (Amendment) Act (Northern Ireland) 2008 (c.5)

*Risk to self or others*

4.—(1) The claimant is suffering from a specific illness, disease or disablement by reason of which there would be a substantial risk to the physical or mental health of any person were the claimant found not to have limited capability for work.

- (2) This paragraph does not apply where the risk could be reduced by a significant amount by—
- (a) reasonable adjustments being made in the claimant’s workplace, or
  - (b) the claimant taking medication to manage their condition where such medication has been prescribed for the claimant by a registered medical practitioner treating the claimant.

*Life threatening disease*

5. The claimant is suffering from a life threatening disease in relation to which—
- (a) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and
  - (b) in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure.

*Disabled and over the age for state pension credit*

6. The claimant has reached the qualifying age for state pension credit and is entitled to disability living allowance or personal independence payment.

SCHEDULE 9

Regulation 41(5)

Circumstances in which a claimant is to be treated as having limited capability for work and work-related activity

*Terminal illness*

1. The claimant is terminally ill.

*Pregnancy*

2. The claimant is a pregnant woman and there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work and work-related activity.

*Receiving treatment for cancer*

3. The claimant is—
- (a) receiving treatment for cancer by way of chemotherapy or radiotherapy;
  - (b) likely to receive such treatment within 6 months after the date of the determination of capability for work and work-related activity; or
  - (c) recovering from such treatment,

and the Department is satisfied that the claimant should be treated as having limited capability for work and work-related activity.

*Risk to self or others*

4. The claimant is suffering from a specific illness, disease or disablement by reason of which there would be a substantial risk to the physical or mental health of any person were the claimant found not to have limited capability for work and work-related activity.

*Disabled and over the age for state pension credit*

5. The claimant has reached the qualifying age for state pension credit and is entitled to attendance allowance, the care component of disability living allowance at the highest rate or the daily living component of personal independence payment at the enhanced rate.

SCHEDULE 10

Regulation 48

Capital to be disregarded

*Premises or land*

1.—(1) Premises or land occupied by a person as their home.

(2) For the purposes of this paragraph and paragraphs 2 to 5, only one set of premises or land may be treated as a person's home.

2. Premises or land occupied by a close relative of a person as their home where that close relative has limited capability for work or has reached the qualifying age for state pension credit.

3. Premises or land occupied by a person's former partner as their home where the person and their former partner are not estranged, but living apart by force of circumstances, for example where the person is in residential care.

4.—(1) Premises or land that a person intends to occupy as their home where—

- (a) the person has acquired the premises or land within the past 6 months but not yet taken up occupation,
- (b) the person is taking steps to obtain possession and has commenced those steps within the past 6 months, or
- (c) the person is carrying out essential repairs or alterations required to render the premises or land fit for occupation and these have been commenced within the past 6 months.

(2) A person is to be taken to have commenced steps to obtain possession of premises or land on the date that legal advice is first sought or proceedings are commenced, whichever is earlier.

5. Premises or land that a person has ceased to occupy as their home following an estrangement from their former partner where—

- (a) the person has ceased to occupy the premises or land within the past 6 months, or
- (b) the person's former partner is a lone parent and occupies the premises or land as their home.

6. Premises or land that a person is taking reasonable steps to dispose of where those steps have been commenced within the past 6 months.

*Business assets*

7. Assets which are used wholly or mainly for the purposes of a trade, profession or vocation which the person is carrying on.

8. Assets which were used wholly or mainly for a trade, profession or vocation that the person has ceased to carry on within the past 6 months if—

- (a) the person is taking reasonable steps to dispose of those assets, or
- (b) the person ceased to be engaged in carrying on the trade, profession or vocation because of incapacity and can reasonably expect to be re-engaged on recovery.

*Rights in pensions schemes etc.*

9. The value of any policy of life insurance.

10.—(1) The value of any right to receive a pension under an occupational or personal pension scheme or any other pension scheme registered under section 153 of the Finance Act 2004 **(100)**.

(2) “Occupational pension scheme” and “personal pension scheme” have the meaning in section 1 of the Pension Schemes (Northern Ireland) Act 1993.**(101)**

11.—(1) The value of a funeral plan contract.

(2) “Funeral plan contract” means a contract under which the person makes payments to a person to secure the provision of a funeral and where the sole purpose of the plan is the provision of a funeral.

*Amounts earmarked for special purposes*

12. An amount deposited with a housing association as a condition of the person occupying premises as their home.

13.—(1) An amount received within the past 6 months which is to be used for the purchase of premises that the person intends to occupy as their home where that amount—

- (a) is attributable to the proceeds of the sale of premises formerly occupied by the person as their home,
- (b) has been deposited with a housing association as mentioned in paragraph 12, or
- (c) is a grant made to the person for the sole purpose of the purchase of a home.

14. An amount received under an insurance policy within the past 6 months in connection with the loss or damage to the premises occupied by the person as their home or to their personal possessions.

15. An amount received within the past 6 months that is to be used for making essential repairs or alterations to premises occupied or intended to be occupied as the person’s home where that amount has been acquired by the person (whether by grant or loan or otherwise) on condition that it is used for that purpose.

*Other payments*

16. Any payment made within the last 12 months under Part 8 of the Contributions and Benefits Act (the social fund).

17.—(1) A payment made within the past 12 months by or on behalf of an authority—

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**(100)** 2004 c. 12.

**(101)** 1993 c. 49.

- (a) under Article 18, 34C, 34D, or 35A of the Children (Northern Ireland) Order 1995(**102**), or
  - (b) under any other enactment in order to meet a person’s welfare needs related to old age or disability, other than living expenses.
- (2) In sub-paragraph (1) “living expenses” has the meaning in regulation 66(2).

18.—(1) A payment received within the past 12 months by way of arrears of, or compensation for late payment of—

- (a) universal credit,
- (b) a benefit abolished by Article 39 of the Order (abolition of benefits), or
- (c) a social security benefit which is not included as unearned income under regulation 66(1) (a) or (b).

(2) “Social security benefit” means a benefit under any enactment or statutory provision relating to social security in any part of the United Kingdom.

19. A payment to a person by virtue of being a holder of the Victoria Cross or George Cross.

## SCHEDULE 11

Regulation 110

### Application of ESA or JSA sanctions to universal credit

#### Moving an ESA sanction to UC

1.—(1) This paragraph applies where—

- (a) a person is, or has ceased to be, entitled to an employment and support allowance;
- (b) there is a reduction relating to the award of the employment and support allowance under section 11J of the Welfare Reform Act (Northern Ireland) 2007(**103**) (sanctions); and
- (c) the person becomes entitled to universal credit.

(2) Any reduction relating to the award of the employment and support allowance is to be applied to the award of universal credit.

(3) The period for which the reduction is to have effect is the number of days which apply to the person under regulations 52 and 53 of the ESA Regulations minus—

- (a) any days which have already resulted in a reduction to the amount of the employment and support allowance; and
- (b) if the award of the employment and support allowance has terminated, any days falling after the date of that termination and before the date on which the award of universal credit starts,

and that period is to be added to the total outstanding reduction period.

(4) The amount of the reduction in the award of universal credit for any assessment period in which the reduction is applied is the amount calculated in accordance with regulation 107 (amount of reduction for each assessment period).

(**102**) S.I. 1995/755 (N.I. 2); Articles 34C and 34D were inserted by section 2 of the Children (Leaving Care) Act (Northern Ireland) 2002(c.11 (N.I.)) and Article 35A was inserted by section 4 of that Act.

(**103**) Section 11J was inserted by Article 63 of the Order.

### **Moving a JSA sanction to UC**

2.—(1) This paragraph applies where—

- (a) a person is, or has ceased to be, entitled to a jobseeker's allowance;
- (b) there is a reduction relating to the person's award of a jobseeker's allowance under Article 8J or 8K of the Jobseekers (Northern Ireland) Order 1995<sup>(104)</sup>; and
- (c) the person becomes entitled to universal credit.

(2) Any reduction relating to the award of the jobseeker's allowance is to be applied to the award of universal credit.

(3) The period for which the reduction is to have effect is the number of days which apply to the person under regulations 20 to 22 of the Jobseeker's Allowance Regulations (Northern Ireland) 2016<sup>(105)</sup> minus—

- (a) any days which have already resulted in a reduction to the amount of the jobseeker's allowance; and
- (b) if the award of the jobseeker's allowance has terminated any days falling after the date of that termination and before the date on which the award of universal credit starts,

and that period is to be added to the total outstanding reduction period.

(4) The amount of the reduction in the award of universal credit for any assessment period in which the reduction is applied is the amount calculated in accordance with regulation 107 (amount of reduction for each assessment period).

### **Effect of ESA or JSA sanction on escalation of UC sanction**

3. Where—

- (a) a reduction in relation to an award of an employment and support allowance or an award of a jobseeker's allowance is applied to an award of universal credit by virtue of paragraph 1 or 2;
- (b) there is a subsequent sanctionable failure under Article 31 or 32 of the Order; and
- (c) the failure giving rise to the reduction in relation to the award of an employment and support allowance or a jobseeker's allowance ("the previous failure") and the reduction period determined for that failure correspond with a failure specified under Article 31 or 32 of the Order to which the same reduction period would apply under Chapter 2 of Part 8 of these Regulations,

for the purposes of determining the reduction period for that subsequent failure, the previous failure is to be treated as if it were the corresponding failure under Article 31 or 32 of the Order

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<sup>(104)</sup>S.I. 1995/2705 (N.I. 15); Articles 8J and 8K were inserted by Article 55(4) of the Order.  
<sup>(105)</sup>S.R. 2016 No. 218.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations contain provisions in relation to universal credit under Part 2 of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (“the Order”). They also include provision for a benefit cap under Article 101 of the Order.

Part 1 contains general provisions and, in particular, sets out some basic concepts that are relevant for determining the persons who are to be included in an award of universal credit.

Part 2 contains provisions about the conditions of entitlement to universal credit. It includes provisions about the basic conditions and provides for exceptions from those conditions. Regulation 17 provides for the minimum amount of universal credit and regulation 18 for the maximum amount of capital a claimant or joint claimants are allowed in order to meet the financial conditions.

Part 3 contains provisions about the calculation of the amount of an award of universal credit, including provision for the duration of an assessment period and for the amount of earned and unearned income which is to be deducted from the maximum amount of the award in each assessment period.

Part 4 contains the detailed provision about the elements that make up the maximum amount of an award. These are the standard allowance, an amount for each child or qualifying young person for whom a claimant is responsible, an amount for housing costs and amounts for special needs and circumstances (limited capability for work or for work and work-related activity, regular and substantial caring responsibilities for a severely disabled person and childcare costs).

In Part 4, in particular regulations 26 and 27 and Schedules 1 to 5 provide for the amount to be included in respect of a claimant’s liability for payments in respect of accommodation occupied as their home. Schedules 1 to 3 contain general provision as to the types of payments, when a person is regarded as liable for such payments and when they are regarded as occupying accommodation. Schedule 4 provides for the calculation of the amount of the housing costs element where a claimant is renting accommodation and Schedule 5 provides for the calculation where a claimant owns their accommodation.

Part 5 and Schedules 6 to 9 provide for how it is determined whether a claimant has limited capability for work or limited capability for work and work-related activity. This is relevant for the purposes of entitlement to the LCW and LCWRA elements of the award under Part 4 and for the purposes of determining the work-related requirements applicable to a claimant under Part 8.

Part 6 and Schedule 10 provide for how a person’s capital and income (earned and unearned) are to be calculated. This applies for the purposes of the financial conditions and for calculating the amount of an award. Chapter 1 deals with capital. Chapter 2 deals with earned income, which is also relevant for the purposes of applying various thresholds in Parts 7 and 8. Chapter 3 deals with unearned income.

Chapter 4 of Part 6 provides for the treatment of income and capital in certain circumstances. Regulation 75 deals with compensation for personal injury and regulation 76 deals with certain schemes set up to provide compensation for specific events or to meet specific needs. Regulation 77 deals with companies that are analogous to a partnership or one person business.

Part 7 provides for the benefit cap. This reduces the award of universal credit where the total amount of welfare benefits to which a claimant or joint claimants are entitled exceed a prescribed amount. Regulations 82 and 83 provide for exceptions for claimants who have earnings or are in receipt of certain benefits.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Part 8 provides for the claimant's responsibilities. Chapter 1 makes provision in relation to the work-related requirements under Article 20 to 27 of the Order, including which requirements apply to which claimants, how those requirements are met and circumstances in which they do not apply. Chapter 2 provides for the reduction in the amount of an award ("sanction") where a claimant fails to comply with work-related requirements and Schedule 11 deals with the transfer of sanctions which have been incurred in relation to a jobseeker's allowance or an employment and support allowance. Chapter 3 provides for hardship payments in certain cases where a sanction has been applied.

An assessment of the impact of universal credit has been carried out. Copies of the impact assessment may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London, SW1 9NA. It is also available alongside this instrument and the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).