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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 216**

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

**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<sup>(1)</sup>;
- “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<sup>(2)</sup>;
- “relievable pension contributions” has the meaning in section 188 of the Finance Act 2004<sup>(3)</sup>;
- “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<sup>(4)</sup> (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
- (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.

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(1) 2001 c. 2; section 268A was inserted by section 30 of the Finance Act 2009 c. 10.

(2) S.I. 2003/2682.

(3) 2004 c. 12.

(4) 1950 c. 29.

**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>(5)</sup>;

U is unearned income<sup>(6)</sup>;

WA is the work allowance<sup>(7)</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”).

(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

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

(6) For the meaning of “unearned income” see Chapter 3 of Part 6.

(7) For the meaning of “work allowance” see Regulation 23.

(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) (a) taking the actual receipts in that assessment period, and
- (b) (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) (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) (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>(8)</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—

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<sup>(8)</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).

- (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>(9)</sup>

### *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.

<sup>(9)</sup> Regulation 2A was inserted by regulation 4 of [S.I. 2012/822](#).

(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>(10)</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>(11)</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
  - (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) <sup>(12)</sup>.
- (2) In paragraph (1)(f) and (g) a person's living expenses are the cost of —
- (a) food;
  - (b) ordinary clothing or footwear;

<sup>(10)</sup> 1992 c. 8.<sup>(11)</sup> 1993 c. 39.<sup>(12)</sup> 2005 c. 5.

(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(**13**).

(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.

(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;

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(13) [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](#).

“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(14), section 73 of the Education (Scotland) Act 1980(15) or Article 3 of the Education (Student Support) (Northern Ireland) Order) 1998(16) and includes in Scotland, a young student’s bursary paid under regulation 4(1) (c) of the Students’ Allowances (Scotland) Regulations 2007(17).

### **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,
- (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—

(14) 1998 c. 30.

(15) 1980 c. 44.

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

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

*Step 1*

Determine whichever of the following amounts is applicable—

- (a) (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) (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) (c) the year of the course in which the assessment period falls, or
- (d) (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<sup>(18)</sup> in which a person is treated as receiving retirement pension income for the purposes of state pension credit.

## **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.

<sup>(18)</sup> 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](#).



(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>(19)</sup>.

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<sup>(19)</sup> 2009 c. 4.