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## STATUTORY INSTRUMENTS

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**1987 No. 1967**

### **SOCIAL SECURITY**

#### **The Income Support (General) Regulations 1987**

*Made* - - - - *20th November 1987*

*Coming into Force* - - *11th April 1988*

Whereas a draft of this instrument was laid before Parliament in accordance with section 83(3) of the Social Security Act 1986 and approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Services, in exercise of the powers conferred by sections 20(1), (3)(d), (4), (9), (11) and (12), 22(1), (2), (4) and (5) to (9), 23(1), (3) and (5), 51(1)(n) and 84(1) of the Social Security Act 1986 <sup>F1</sup> and sections 114, 166(1) to (3A) of the Social Security Act 1975 <sup>F2</sup> and of all other powers enabling him in that behalf by this instrument, which is made before the end of a period of 12 months from the commencement of the enactments under which it is made, hereby makes the following Regulations:

#### **Textual Amendments**

- F1** [1986 c. 50](#); section 84(1) is an interpretation provision and is cited because of the meanings assigned to the words “prescribed” and “regulations”.
- F2** [1975 c. 14](#); section 114 is applied by section 52(3)(b) of the [Social Security Act 1986 \(c. 50\)](#); section 166(3A) is inserted by section 62 of that Act and section 166(1) to (3A) is applied by section 83(1) of that Act.

#### **Modifications etc. (not altering text)**

- C1** [Regulations](#) modified (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), [art. 19](#)

## **PART I**

### **GENERAL**

#### **Citation and commencement**

1. These Regulations may be cited as the Income Support (General) Regulations 1987 and shall come into force on 11th April 1988.

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## Commencement Information

**II** Reg. 1 in force at 11.4.1988, see reg. 1

## Interpretation

**2.—**(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1986;

“attendance allowance” means—

- (a) an attendance allowance under section 35 of the Social Security Act<sup>F3</sup>;
- (b) an increase of disablement pension under section 61 or 63 of that Act<sup>F4</sup>;
- (c) a payment under regulations made in exercise of the power conferred by section 159(3) (b) of that Act;
- (d) an increase of an allowance which is payable in respect of constant attendance under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975<sup>F5</sup>;
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983<sup>F6</sup> or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

“benefit week” has the meaning prescribed in paragraph 4 of Schedule 7 to the Social Security (Claims and Payments) Regulations 1987<sup>F7</sup>; [<sup>F8</sup>and for the purposes of calculating any payment of income and of regulation 74(2)(a) “benefit week” shall also mean the period of 7 days ending on the day before the first day of the first benefit week following the date of claim or the last day on which income support is paid if it is in payment for less than a week;]

[<sup>F9</sup>“board and lodging accommodation” means—

- (a) accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises; or
- (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of his or of any other member of his family, or other than on a commercial basis;]

“claimant” means a person claiming income support;

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

[<sup>F10</sup>“community charge benefit” means community charge benefits under Part VII of the Contributions and Benefits Act as originally enacted;]

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the Act, the Social Security Act or the Child Benefit Act 1975<sup>F11</sup> are charged;

[<sup>F12</sup>“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;]

“co-ownership scheme” means a scheme under which a dwelling is let by a housing association and the tenant, or his personal representative, will, under the terms of the tenancy agreement or of the agreement under which he became a member of the association, be entitled, on his ceasing to be a member and subject to any condition stated in either agreement, to a sum calculated by reference directly or indirectly to the value of the dwelling;

“couple” means a married or an unmarried couple;

“course of study” means any full-time course of study or sandwich course whether or not a grant is made for attending it;

“Crown tenant” means a person who occupies a dwelling under a tenancy or licence where the interest of the landlord belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department, except (in the case of an interest belonging to Her Majesty in right of the Crown) where the interest is under the management of the Crown Estate Commissioners;

[<sup>F13</sup>“date of claim” means the date on which the claimant makes, or is treated as making, a claim for income support for the purposes of regulation 6 of the Social Security (Claims and Payments) Regulations 1987;]

[<sup>F14</sup>“disability living allowance” means a disability living allowance under section 37ZA of the Social Security Act;]

[<sup>F14</sup>“disability working allowance” means a disability working allowance under section 20 of the Act;]

“dwelling occupied as the home” means the dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated.

“earnings” has the meaning prescribed in regulation 35 or, as the case may be, 37;

“employed earner” shall be construed in accordance with section 2(1)(a) of the Social Security Act;

[<sup>F15</sup>“employment” except for the purposes of section 20(3)(d) of the Act, includes any trade, business, profession, office or vocation;]

“housing association” has the meaning assigned to it by section 1(1) of the Housing Associations Act 1985<sup>F16</sup>;

“housing benefit expenditure” means expenditure of a kind for which housing benefit may be granted;

“invalid carriage or other vehicle” means a vehicle propelled by petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

[<sup>F17</sup>“last day of the course” has the meaning prescribed in regulation 61 for the purposes of the definition of “period of study”];]

“liable relative” has the meaning prescribed in regulation 54;

“lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child or young person;

“long tenancy” means a tenancy granted for a term of years certain exceeding twenty one years, whether or not the tenancy is, or may become, terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture (or, in Scotland, irritancy) or otherwise and

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includes a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal unless it is a lease by sub-demise from one which is not a long tenancy;

[<sup>F18</sup>“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988 by virtue of section 832(1) of that Act;]

[<sup>F13</sup>“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Part III of the Employment Protection (Consolidation) Act 1978;]

“mobility allowance” means an allowance under section 37A of the Social Security Act<sup>F19</sup>;

“mobility supplement” means any supplement under article 26A of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983<sup>F20</sup> including such a supplement by virtue of any other scheme or order or under Article 25A of the Personal Injuries (Civilians) Scheme 1983<sup>F21</sup>;

“net earnings” means such earnings as are calculated in accordance with regulation 36;

“net profit” means such profit as is calculated in accordance with regulation 38;

“non-dependant” has the meaning prescribed in regulation 3;

“non-dependant deduction” means a deduction that is to be made under regulation 17(e) and paragraph 11 of Schedule 3;

“nursing home” has the meaning prescribed in regulation 19(3);

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

“partner” means where a claimant—

- (a) is a member of a married or an unmarried couple, the other member of that couple;
- (b) is married polygamously to two or more members of his household, any such member;

“payment” includes a part of a payment;

[<sup>F22</sup>“pay period” means the period in respect of which a claimant is, or expects to be, normally paid by his employer, being a week, a fortnight, four weeks, a month or other shorter or longer period as the case may be;]

[<sup>F23</sup>“pension fund holder” means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract concerned;]

[<sup>F24</sup>“period of study” means the period beginning with the start of the course of study and ending with the last day of the course or such earlier date as the student abandons it or is dismissed from it; but any period of attendance by the student at his educational establishment in connection with the course which is outside the period of the course shall be treated as part of the period of study;]

[<sup>F13</sup>“personal pension scheme” has the same meaning as in [<sup>F25</sup>section 1 of the Pension Schemes Act 1993] and, in the case of a self-employed earner, includes a scheme approved by the Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988;]

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

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[<sup>F26</sup>“polygamous marriage” means any marriage during the subsistence of which a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy;]

[<sup>F27</sup>“preserved right” means a preserved right for the purpose of regulation 19;]

[<sup>F28</sup>“qualifying person” means a person in respect of whom payment has been made from the Fund [<sup>F29</sup>or the Eileen Trust];]

[<sup>F30</sup>“registered person” means a person registered with a body mentioned in regulation 7D(1)(a)(i) to (iv) of the Child Benefit (General) Regulations 1976 for—

(a) work; or

(b) training under the youth training scheme;]

“relative” means close relative, grand-parent, grand-child, uncle, aunt, nephew or niece;

“relevant enactment” has the meaning prescribed in regulation 16(8)(a);

“remunerative work” has the meaning prescribed in regulation 5;

[<sup>F31</sup>“residential accommodation” except in [<sup>F32</sup>regulation 19 and Schedule 3B] has the meaning prescribed in regulation 21(3);]

[<sup>F27</sup>“residential allowance” means the weekly amount determined in accordance with paragraph 2A of Schedule 2;]

“residential care home” has the meaning prescribed in regulation 19(3);

[<sup>F33</sup>“retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;]

“self-employed earner” shall be construed in accordance with section 2(1)(b) of the Social Security Act;

“single claimant” means a claimant who neither has a partner nor is a lone parent;

“Social Security Act” means the Social Security Act 1975<sup>F34</sup>;

“student” has the meaning prescribed in regulation 61;

“supplementary benefit” means a supplementary pension or allowance under section 1 or 4 of the Supplementary Benefits Act 1976<sup>F35</sup>;

“terminal date” in respect of a claimant means the terminal date in his case for the purposes of regulation 7 of the Child Benefit (General) Regulations 1976<sup>F36</sup>;

[<sup>F37</sup>“the Eileen Trust” means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;]

[<sup>F28</sup>“the Fund” means moneys made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by him on 24th April 1992 or, in Scotland, on 10th April 1992;]

[<sup>F38</sup>“the Independent Living (1993) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Shepherd of the other part;]

[<sup>F38</sup>“the Independent Living (Extension) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;]

[<sup>F39</sup>“the Independent Living Fund” means the charitable trust established out of funds provided by the Secretary of State for the purpose of providing financial assistance to those persons

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incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;]

[<sup>F38</sup>“the Independent Living Funds” means the Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1933) Fund;]

[<sup>F40</sup>“the Macfarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;]

[<sup>F41</sup>“the Macfarlane (Special Payments) (No. 2) Trust” means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;]

[<sup>F42</sup>“the Macfarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;]

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the [<sup>F43</sup>Secretary of State for Employment][<sup>F44</sup>, Scottish Enterprise or Highlands and Islands Enterprise];
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of [<sup>F45</sup>the Secretary of State for Employment][<sup>F44</sup>, Scottish Enterprise or Highlands and Islands Enterprise],

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education [<sup>F46</sup>, other than under arrangements made under section 2 of the Employment and Training Act 1973,] or is training as a teacher;

[<sup>F47</sup>“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;]

[<sup>F48</sup>“water charges” means—

- (a) as respects England and Wales, any water and sewerage charges under Chapter I of Part V of the Water Industry Act 1991;
- (b) as respects Scotland, any water and sewerage charges under Schedule 11 to the Local Government Finance Act 1992;

in so far as such charges are in respect of the dwelling which a person occupies as his home;]

[<sup>F49</sup>“year of assessment” has the meaning prescribed in section 832(1) of the Income and Corporation Taxes Act 1988;]

“young person” has the meaning prescribed in regulation 14.

[<sup>F50</sup>“youth training scheme” [<sup>F51</sup>or youth training] means—

- (a) arrangements made under section 2 of the Employment and Training Act 1973 (functions of the Secretary of State); or
- (b) arrangements made by the Secretary of State for persons enlisted in Her Majesty’s forces for any special term of service specified in regulations made under section 2 of the Armed Forces Act 1966 (power of Defence Council to make regulations as to engagement of persons in regular forces),

for purposes which include the training of persons who, at the beginning of their training, are under the age of 18.]

- (2) In these Regulations, unless the context otherwise requires, a reference—
- (a) to a numbered Part is to the Part of these Regulations bearing that number;
  - (b) to a numbered regulation or Schedule is to the regulation in or Schedule to these Regulations bearing that number;
  - (c) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;
  - (d) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.
- (3) Unless the context requires otherwise, any reference to the claimant's family or, as the case may be, to a member of his family, shall be construed for the purposes of these Regulations as if it included in relation to a polygamous marriage a reference to any partner and to any child or young person who is treated as the responsibility of the claimant or his partner, where that child or young person is a member of the claimant's household.

#### Textual Amendments

- F3** Section 35 was amended by the [National Health Service Act 1977 \(c. 49\)](#), [Schedule 15](#), paragraph 63, by the [Social Security Act 1979 \(c. 18\)](#) section 2 and by the [Social Security Act 1980 \(c. 30\)](#), [Schedule 1](#), Part II, paragraph 8.
- F4** Subsections (3) and (4) of section 61 were added by the [Social Security Act 1986 \(c. 50\)](#), [section 39](#) and Schedule 3, paragraph 6.
- F5** [1975 c. 16](#).
- F6** [S.I. 1983/686](#); the relevant amending instruments are [S.I. 1983/1164](#) and [1984/1675](#).
- F7** [S.I. 1987/1968](#).
- F8** Words in reg. 2(1) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), [2\(a\)](#)
- F9** Words in reg. 2(1) inserted (10.4.1989) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(b), [2\(a\)](#)
- F10** Words in reg. 2(1) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), [3\(a\)](#)
- F11** [1975 c. 61](#).
- F12** Words in reg. 2(1) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), [3\(b\)](#)
- F13** Words in reg. 2(1) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), [2\(a\)-\(c\)](#)
- F14** Words in reg. 2(1) inserted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), [11\(2\)](#) (with reg. [1\(2\)](#))
- F15** Words in reg. 2(1) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), [2\(b\)](#)
- F16** [1985c.69](#).
- F17** Words in reg. 2(1) inserted (5.8.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(a), [2](#) (with reg. 1(2))

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- F18** Words in reg. 2(1) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1992 (S.I. 1992/2155), regs. 1(1), **12**
- F19** Section 37A was inserted by section 22(1) of the Social Security Pensions Act 1975 (c. 60) and amended by the National Health Service Act 1977 (c. 49), **Schedule 15**, paragraph 64, the Social Security Act 1979 (c. 18), **section 3** and by Sections 71 and 86 and Schedule 11 of the Social Security Act 1986 (c. 50).
- F20** S.I. 1983/883; article 26A was added by S.I. 1983/1116 and amended by S.I. 1983/1521 and 1986/592.
- F21** S.I. 1983/686, amended by S.I. 1983/1164, 1540 and 1986/628.
- F22** Words in reg. 2(1) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(a), **22(a)**
- F23** Words in reg. 2(1) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Income-related Benefits Schemes and Social Security (Claims and Payments) (Miscellaneous Amendments) Regulations 1995 (S.I. 1995/2303), regs. 1(1)(a), **6(2)(a)** (with reg. 8)
- F24** Words in reg. 2(1) substituted (1.9.1990) by The Social Security Benefits (Student Loans and Miscellaneous Amendments) Regulations 1990 (S.I. 1990/1549), regs. 1(1)(a), **5(2)** (with reg. 7(1))
- F25** Words in reg. 2(1) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Income-related Benefits Schemes and Social Security (Claims and Payments) (Miscellaneous Amendments) Regulations 1995 (S.I. 1995/2303), regs. 1(1)(a), **6(2)(b)** (with reg. 8)
- F26** Words in reg. 2(1) substituted (12.12.1988) by The Income Support (General) Amendment No. 5 Regulations 1988 (S.I. 1988/2022), regs. 1(1)(a), **2(b)**
- F27** Words in reg. 2(1) inserted (1.4.1993) by The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992 (S.I. 1992/3147), regs. 1(1), **2(1)(a)**
- F28** Words in reg. 2(1) inserted (7.5.1992) by The Income-related Benefits Schemes and Social Security (Recoupment) Amendment Regulations 1992 (S.I. 1992/1101), regs. 1(1), **6(2)(a)(b)**
- F29** Words in reg. 2(1) added (14.5.1993) by The Income-related Benefits Schemes and Social Security (Recoupment) Amendment Regulations 1993 (S.I. 1993/1249), regs. 1(1)(a), **4(2)(a)**
- F30** Words in reg. 2(1) inserted (12.9.1988) by The Income Support (General) Amendment No. 3 Regulations 1988 (S.I. 1988/1228), regs. 1(1)(b), **2(a)**
- F31** Words in reg. 2(1) substituted (12.9.1988) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), regs. 1(1)(b), **2(c)**
- F32** Words in reg. 2(1) substituted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by The Income Support (General) Amendment Regulations 1989 (S.I. 1989/534), reg. 1(1), **Sch. 1 para. 1**
- F33** Words in reg. 2(1) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Income-related Benefits Schemes and Social Security (Claims and Payments) (Miscellaneous Amendments) Regulations 1995 (S.I. 1995/2303), regs. 1(1)(a), **6(2)(c)** (with reg. 8)
- F34** 1975 c. 14.
- F35** 1976 c. 71, as amended by section 6(1) of, and Part I of Schedules 2 to, the Social Security Act 1980 (c. 30).
- F36** S.I. 1976/965; the relevant amending instruments are S.I. 1980/1054, 1982/470 and 1987/357.
- F37** Words in reg. 2(1) inserted (14.5.1993) by The Income-related Benefits Schemes and Social Security (Recoupment) Amendment Regulations 1993 (S.I. 1993/1249), regs. 1(1)(a), **4(2)(b)**
- F38** Words in reg. 2(1) inserted (22.4.1993) by The Social Security Benefits (Miscellaneous Amendments) (No. 2) Regulations 1993 (S.I. 1993/963), regs. 1, **2(2)**
- F39** Words in reg. 2(1) inserted (9.6.1988) by The Family Credit and Income Support (General) Amendment Regulations 1988 (S.I. 1988/999), regs. 1(1), **4**
- F40** Words in reg. 2(1) inserted (31.1.1990) by The Income-related Benefits Schemes Amendment Regulations 1990 (S.I. 1990/127), regs. 1(1), **3(2)**
- F41** Words in reg. 2 inserted (11.5.1991) by The Income-related Benefits Schemes and Social Security (Recoupment) Amendment Regulations 1991 (S.I. 1991/1175), regs. 1(1), **5(2)**
- F42** Words in reg. 2(1) inserted (11.4.1988) by The Income Support (General) Amendment Regulations 1988 (S.I. 1988/663), regs. 1(1), **2**



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- F43** Words in reg. 2(1) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **2(1)(a)** (with reg. 1(2))
- F44** Words in reg. 2(1) inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, **9(a)**
- F45** Words in reg. 2(1) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **2(2)** (with reg. 1(2))
- F46** Words in reg. 2(1) inserted (21.8.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(a), **2**
- F47** Words in reg. 2(1) inserted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **17** (with reg. 1(2))
- F48** Words in reg. 2(1) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), **3(c)**
- F49** Words in reg. 2(1) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **22(b)**
- F50** Words in reg. 2(1) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), **2(b)**
- F51** Words in reg. 2(1) inserted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **2(4)** (with reg. 1(2))

#### **Commencement Information**

- I2** Reg. 2 in force at 11.4.1988, see reg. 1

#### **Definition of non-dependant**

3.—(1) In these Regulations, “non-dependant” means any person, except someone [<sup>F52</sup>to whom paragraph (2), (2A) or (2B) applies], who normally resides with a claimant [<sup>F53</sup>or with whom a claimant normally resides.]

[<sup>F54</sup>(2) This paragraph applies to—

- (a) any member of the claimant’s family;
- (b) a child or young person who is living with the claimant but who is not a member of his household by virtue of regulation 16 (circumstances in which a person is to be treated as being or not being a member of the household);
- (c) a person who lives with the claimant in order to care for him or for the claimant’s partner and who is engaged for that purpose by a charitable or [<sup>F55</sup>voluntary organisation] which makes a charge to the claimant or the claimant’s partner for the care provided by that person;
- (d) the partner of a person to whom sub-paragraph (c) applies.

(2A) This paragraph applies to a person, other than a close relative of the claimant or the claimant’s partner,—

- (a) who is liable to make payments on a commercial basis to the claimant or the claimant’s partner in respect of his occupation of the claimant’s dwelling;
- (b) to whom the claimant or the claimant’s partner is liable to make payments on a commercial basis in respect of his occupation of that person’s dwelling;
- (c) who is a member of the household of a person to whom sub-paragraph (a) or (b) applies.

(2B) Subject to paragraph (2C), this paragraph applies to—

- (a) a person who jointly occupies the claimant’s dwelling and who is either—

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- (i) a co-owner of that dwelling with the claimant or the claimant's partner (whether or not there are other co-owners); or
  - (ii) jointly liable with the claimant or the claimant's partner to make payments to a landlord in respect of his occupation of that dwelling;
- (b) a partner of a person to whom sub-paragraph (a) applies.

(2C) Where a person is a close relative of the claimant or the claimant's partner, paragraph (2B) shall apply to him only if the claimant's, or the claimant's partner's, co-ownership, or joint liability to make payments to a landlord in respect of his occupation, of the dwelling arose either before 11th April 1988, or, if later, on or before the date upon which the claimant or the claimant's partner first occupied the dwelling in question.]

<sup>F56</sup>(3) .....

(4) For the purposes of this regulation a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area [<sup>F57</sup>but not if each person is separately liable to make payments in respect of his occupation of the dwelling to the landlord].

(5) In this regulation "communal area" means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation.

#### Textual Amendments

- F52** Words in reg. 3(1) substituted (11.11.1991) by [The Income Support \(General\) Amendment No. 6 Regulations 1991 \(S.I. 1991/2334\)](#), regs. 1(1), **2(a)** (with reg. 1(2))
- F53** Words in reg. 3(1) added (2.12.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 6\) Regulations 1994 \(S.I. 1994/3061\)](#), regs. 1, **2(2)**
- F54** Reg. 3(2)-(2C) substituted for reg. 3(2) (11.11.1991) by [The Income Support \(General\) Amendment No. 6 Regulations 1991 \(S.I. 1991/2334\)](#), regs. 1(1), **2(b)** (with reg. 1(2))
- F55** Words in reg. 3(2)(c) substituted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **18** (with reg. 1(2))
- F56** Reg. 3(3) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 2(b)**
- F57** Words in reg. 3(4) added (with effect in accordance with reg. 1(1)(a) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **2(c)**

#### Commencement Information

- I3** Reg. 3 in force at 11.4.1988, see reg. 1

#### [<sup>F58</sup>Permitted period

**3A.—(1)** For the purposes of regulation 17(6), <sup>F59</sup>... paragraph 7(6) of Schedule 3A, paragraph 6(3) of Schedule 3B and paragraphs 4 and 6 of Schedule 8 (applicable amounts, mortgage interest, protected sums and earnings to be disregarded), where a claimant has ceased to be entitled to income support—

- (a) because he or his partner becomes engaged in remunerative work the permitted period, subject to paragraph (2), shall be twelve weeks; or
- (b) for any other reason, the permitted period shall be eight weeks.

(2) Subject to paragraph (3), where the claimant or his partner has ceased to be engaged in the remunerative work referred to in paragraph (1)(a) the permitted period shall be eight weeks if—

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- (a) the claimant's weekly applicable amount is reduced under regulation 22 (reduction in applicable amounts in certain cases of actual or notional unemployment benefit disqualification) because of the cessation of that work; or
- (b) the claimant or his partner has ceased to be engaged in that work within 6 weeks of beginning it; or
- (c) at any time during the period of 26 weeks immediately preceding the beginning of that work, the person who has ceased to be engaged in it—
  - (i) was engaged in remunerative work; or
  - (ii) was in relevant education; or
  - (iii) was a student.

(3) Paragraph (2)(b) or (c) shall not apply if, by virtue of section 20A(2) of the Social Security Act (exemption from disqualification for unemployment benefit) , the person who has ceased to be engaged in remunerative work is exempted from disqualification for receiving unemployment benefit.]

#### **Textual Amendments**

- F58** Reg. 3A inserted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), 2
- F59** Words in [reg. 3A\(1\)](#) omitted (12.12.1995) by virtue of [The Social Security \(Income Support, Claims and Payments and Adjudication\) Amendment Regulations 1995 \(S.I. 1995/2927\)](#), **regs. 1(1), 4**

## **PART II**

### **CONDITIONS OF ENTITLEMENT**

#### **Temporary absence from Great Britain**

4.—(1) Where a claimant is entitled to income support for a period immediately preceding a period of temporary absence from Great Britain, his entitlement to income support [<sup>F60</sup> shall continue only—

- (a) in the circumstances specified in paragraph (2), during the first 4 weeks of that period of temporary absence; and
- (b) in the circumstances specified in paragraph (3), during the first 8 weeks of that period.]

(2) The circumstances in which a claimant's entitlement to income support is to continue during the first four weeks of a temporary absence from Great Britain are that—

- (a) the period of absence is unlikely to exceed 52 weeks; and
- (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to income support; and
- (c) any one of the following conditions applies—
  - (i) the claimant is not required to be available for employment under regulation 8(1) and Schedule 1 other than paragraph 5, 10, 18 to 20 of that Schedule (persons not required to be available for employment); or
  - (ii) he is not required to be available for employment under regulation 8(1) and paragraph 5 of Schedule 1 (incapacity for work) and his absence from Great Britain

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is for the sole purpose of receiving treatment from an appropriately qualified person for the incapacity by reason of which he is not required to be so available; or

- (iii) he is in Northern Ireland; or
- (iv) he is a member of a couple and he and his partner are both absent from Great Britain, and a premium referred to in paragraph 9, 10, 11 or 13 of Schedule 2 (applicable amounts) is applicable in respect of his partner <sup>[F61]</sup> or

<sup>[F62]</sup>(v) on the day on which the absence began he had satisfied the provisions of paragraph 5 of Schedule 1 (persons incapable of work) for a continuous period of not less than—

- (aa) 196 days in the case of a claimant who is terminally ill within the meaning of section 30B(4) of the Contributions and Benefits Act, or who is entitled to the highest rate of the care component of disability living allowance; or
- (bb) 364 days in any other case,

and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period.]]

<sup>[F63]</sup>(3) The circumstances in which a claimant's entitlement to income support is to continue during the first 8 weeks of a temporary absence from Great Britain are that—

- (a) the period of absence is unlikely to exceed 52 weeks; and
- (b) the claimant continues to satisfy the other conditions of entitlement to income support; and
- (c) the claimant is, or the claimant and any other member of his family are, accompanying a member of the claimant's family who is a child or young person solely in connection with arrangements made for the treatment of that child or young person for a disease or bodily or mental disablement; and
- (d) those arrangements relate to treatment—
  - (i) outside Great Britain;
  - (ii) during the period whilst the claimant is, or the claimant and any member of his family are, temporarily absent from Great Britain; and
  - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.]

<sup>[F63]</sup>(4) In paragraphs (2) and (3) “appropriately qualified” means qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.]

#### Textual Amendments

- F60** Words in reg. 4(1) substituted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **3(a)**
- F61** Reg. 4(2)(c)(v) and word added (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **3**
- F62** Reg. 4(2)(c)(v) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **5** (with reg. 1(4))
- F63** Reg. 4(3)(4) added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **3(b)**

#### Commencement Information

- I4** Reg. 4 in force at 11.4.1988, see reg. 1

## Persons treated as engaged in remunerative work

5.—(1) Subject to the following provisions of this regulation, for the purposes of section 20(3) (c) of the Act (conditions of entitlement to income support), remunerative work is work in which a person is engaged, or, where his hours of work fluctuate, he is engaged on average, for [<sup>F64</sup>not less than 16 hours] a week being work for which payment is made or which is done in expectation of payment.

(2) [<sup>F65</sup>Subject to paragraph (3B),] the number of hours for which a person is engaged in work shall be determined—

- (a) where no recognisable cycle has been established in respect of a person's work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which he is expected to work in a week;
- (b) where the number of hours for which he is engaged fluctuate, by reference to the average of hours worked over—
  - (i) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does no work, those periods but disregarding any other absences);
  - (ii) in any other case, the period of five weeks immediately before the date of claim or the date of review, or such other length of time as may, in the particular case, enable the person's average hours of work to be determined more accurately.

(3) A person shall be treated as engaged in remunerative work during any period for which he is absent from work referred to in paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

[<sup>F66</sup>(3A) A person shall not be treated as engaged in remunerative work on any day on which the person is on maternity leave or is absent from work because he is ill.]

[<sup>F67</sup>(3B) Where for the purpose of paragraph (2)(b)(i), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.]

(4) A person who makes a claim and to whom or whose partner section 23 of the Act (trade disputes) applies [<sup>F68</sup>or applied] shall, for the period of seven days following the date on which the stoppage of work due to a trade dispute at his or his partner's place of work commenced or, if there is no stoppage, the date on which he or his partner first withdrew his labour in furtherance of a trade dispute, be treated as engaged in remunerative work.

(5) A person who was, or was treated as being, engaged in remunerative work and in respect of that work earnings to which [<sup>F69</sup>regulation 35(1)(b) to (d) and (i)] (earnings of employed earners) applies are [<sup>F70</sup>paid] shall be treated as being engaged in remunerative work for the period for which those earnings are taken into account in accordance with Part V.

[<sup>F71</sup>(6) For the purposes of this regulation, in determining the number of hours in which a person is engaged or treated as engaged in remunerative work, no account shall be taken of any hours in which the person is engaged in an employment or a scheme to which paragraph (a) to [<sup>F72</sup>paragraph (k)] of regulation 6 (persons not treated as engaged in remunerative work) applies.]

[<sup>F73</sup>(7) For the purposes of paragraphs (1) and (2), in determining the number of hours for which a person is engaged in work, that number shall include any time allowed to that person by his employer for a meal or for refreshment, but only where that person is, or expects to be, paid earnings in respect of that time.]

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### Textual Amendments

- F64** Sch. 9 para. 19 substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(b), **9(3)**
- F65** Words in reg. 5(2) inserted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **19(a)** (with reg. 1(2))
- F66** Reg. 5(3A) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **3(2)**
- F67** Reg. 5(3B) inserted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **19(b)** (with reg. 1(2))
- F68** Words in reg. 5(4) inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **4**
- F69** Words in reg. 5(5) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **3**
- F70** Word in reg. 5(5) substituted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **3**
- F71** Reg. 5(6) added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **3**
- F72** Words in reg. 5(6) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **3(3)**
- F73** Reg. 5(7) added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **4**

### Commencement Information

- I5** Reg. 5 in force at 11.4.1988, see [reg. 1](#)

### Persons not treated as engaged in remunerative work

6. A person shall not be treated as engaged in <sup>F74</sup>remunerative work in so far as—
- <sup>F75</sup>(a) he is mentally or physically disabled, and by reason of that disability—
- (i) his earnings are reduced to 75 per cent. or less of what a person without that disability and working the same number of hours would reasonably be expected to earn in that employment or in comparable employment in the area; or
  - (ii) his number of hours of work are 75 per cent. or less of what a person without that disability would reasonably be expected to undertake in that employment or in comparable employment in the area.]
- (b) he is engaged in child minding in his home;
- (c) he is engaged by a charity or <sup>F76</sup>voluntary organisation<sup>F77</sup>...,] or is a volunteer where the only payment received by him or due to be paid to him, is a payment which is to be disregarded under regulation 40(2) and paragraph 2 of Schedule 9 (sums to be disregarded in the calculation of income other than earnings);
- (d) he is engaged on a scheme for which a training allowance is being paid; <sup>F78</sup>...
- (e) subject to regulation 5(4) [<sup>F79</sup>and (5)] (persons treated as engaged in remunerative work) he is a person to whom section 23 of the Act (trade disputes) applies [<sup>F80</sup>or in respect of whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by section 23A(b) of the Act (effect of return to work)]; <sup>F78</sup>...

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- (f) he is a person who is not required to be available for employment because regulation 8 and paragraph 4 of Schedule 1 (person caring for another) applies to him.
- [<sup>F81</sup>(g) he is in employment, and—
- (i) lives in, or is temporarily absent from, a residential care home, a nursing home or residential accommodation, and either
  - (ii) his, or his partner's, applicable amount falls to be calculated in accordance with Part I of Schedule 4 (applicable amounts of persons in residential care and nursing homes) or, as the case may be, paragraph 9, 10 to 10D, 13, 16 or 18 of Schedule 7 (applicable amounts in special cases), or
  - (iii) he or his partner satisfies the conditions specified in paragraph 2A(2) of Part I of Schedule 2 (conditions for entitlement to a residential allowance);]

[<sup>F82</sup>(h) he is engaged in any one of the employments mentioned in heads (a) to (d) of subparagraph (1) of paragraph 7 of Schedule 8 (which relates to persons serving as firemen, in coastal rescue activities etc); <sup>F83</sup> ...]

[<sup>F82</sup>(j) he is performing his duties as a councillor, and for this purpose “councillor” has the same meaning as in paragraph 2(6) of Schedule 8 to the Social Security Act [<sup>F84</sup>1989; or]]

[<sup>F85</sup>(k) he is engaged in caring for a person who is accommodated with him by virtue of arrangements made under any of the provisions referred to in paragraph 26 [<sup>F86</sup>or in accordance with paragraph 27] of Schedule 9 (sums to be disregarded in the calculation of income other than earnings) and is in receipt of any payment specified in [<sup>F87</sup>those paragraphs].]

### Textual Amendments

- F74** Words in reg. 6 substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **4(a)**
- F75** Reg. 6(a) substituted (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **4(a)** (with regs. 1(2), 22-24)
- F76** Words in reg. 6(c) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **23(a)**
- F77** Words in reg. 6(c) omitted (10.4.1995) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **20** (with reg. 1(2))
- F78** Word in reg. 6(d)(e) omitted (6.4.1992) by virtue of [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **2(a)** (with reg. 1(2))
- F79** Words in reg. 6(e) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **4(b)**
- F80** Words in reg. 6(e) inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **5**
- F81** Reg. 6(g) substituted (1.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/518\)](#), regs. 1, **5(2)**
- F82** Reg. 6(h)(j) added (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **2(b)** (with reg. 1(2))
- F83** Word in reg. 6(h) revoked (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **13(a)**
- F84** Words in reg. 6(j) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **13(b)**

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- F85** Reg. 6(k) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **13(c)**
- F86** Words in reg. 6(k) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **23(b)**
- F87** Words in reg. 6(k) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **23(b)**

#### Commencement Information

- I6** Reg. 6 in force at 11.4.1988, see reg. 1

### Meaning of employment

7.—<sup>[F88]</sup>(1) For the purposes of section 20(3)(d) of the Act (conditions of entitlement to income support) <sup>[F89]</sup>in so far as it relates to the condition of availability for employment] only work in employed earner's employment within the meaning of the Social Security Act—

- (a) which the claimant can reasonably be expected to do;
- (b) for which payment is made or which is done in expectation of payment; and
- (c) for which he would normally be engaged for <sup>[F90]</sup>not less than 16 hours] a week or, if he is mentally or physically disabled, such lesser number of hours as, having regard to his disability, he is usually capable of working,

shall be treated as employment.

<sup>[F91]</sup>(2) For the purposes of section 20(3)(d) of the Act in so far as it relates to the condition of actively seeking employment, work which is treated as employment for the purposes of paragraph (1) and employment as a self-employed earner under any scheme for assisting claimants to become self-employed earners established under arrangements made pursuant to section 2 of the Employment and Training Act 1973 <sup>[F92]</sup>or section 2 of the Enterprise and New Towns (Scotland) Act 1990] shall be treated as employment.]

#### Textual Amendments

- F88** Reg. 7 renumbered as reg. 7(1) (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **4**
- F89** Words in reg. 7(1) inserted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **4(a)**
- F90** Words in reg. 7(1)(c) substituted (7.4.1992) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(d), **5** (with reg. 1(2))
- F91** Reg. 7(2) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **4(b)**
- F92** Words in reg. 7(2) inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, 2, **Sch.**

#### Commencement Information

- I7** Reg. 7 in force at 11.4.1988, see reg. 1



## Persons not required to be available for employment

8.—(1) A person, other than one to whom regulation 10(1)(h) applies (circumstances in which a person is to be treated as available for employment), to whom any paragraph of Schedule 1 (persons not required to be available for employment) applies in any week shall not be required to be available for employment in that week.

(2) <sup>F93</sup>A person, other than one to whom regulation 10(1)(h) applies, to whom none of the provisions of Schedule 1 ... applies, shall, where—

- [<sup>F94</sup>(a) an adjudication officer has determined for the purposes of section 171B of the Contributions and Benefits Act (the own occupation test) that that person is not incapable of work; and.]
- (b) that person's medical practitioner continues to supply evidence of his incapacity for work in accordance with regulation 2 of the Social Security (Medical Evidence) Regulations 1976 <sup>F95</sup> (evidence of incapacity for work); and
- (c) that person has made and is pursuing an appeal against the determination of an adjudication officer that he is not so incapable; and
- (d) that person, were he required to be available for employment, would not be treated as so available under regulation 9(1) (persons treated as available for employment),

not be required to be available for employment pending the determination of his appeal.

[<sup>F96</sup>(2A) A person, other than one to whom paragraph (2) or regulation 10(1)(h) applies, to whom none of the provisions of Schedule 1 applies, shall, where—

- (a) an adjudication officer has determined for the purposes of section 171C of the Contributions and Benefits Act (the all work test) that that person is not incapable of work; and
- (b) that person has made and is pursuing an appeal against that determination; and
- (c) that person, were he required to be available for employment, would not be treated as so available under regulation 9(1) (persons treated as available for employment),

not be required to be available for employment pending the determination of his appeal.]

[<sup>F97</sup>(3) A person, other than one to whom [<sup>F98</sup>[<sup>F99</sup>paragraph (2) or (2A)] or] regulation 10(1)(h) applies, to whom none of the provisions of Schedule 1 applies, shall, for any period when—

- (a) he would, were he required to be available for employment, not be treated as so available under regulation 9(1); and
- (b) the adjudication officer is satisfied that, unless income Support is paid, the claimant or a member of his family (if any) will suffer hardship,

not be required to be available for employment.]

### Textual Amendments

- F93** Words in reg. 8(2) omitted (8.4.1991) by virtue of [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **3(a)** (with reg. 1(2))
- F94** Reg. 8(2)(a) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **6(2)** (with regs. 1(4), 20(1)(3))
- F95** S.I. 1976/615; the relevant amending instruments are S.I. 1982/699 and 1987/409.
- F96** Reg. 8(2A) inserted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **6(3)** (with regs. 1(4), 20(1)(3))
- F97** Reg. 8(3) added (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **6**

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- F98** Words in reg. 8(3) inserted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **3(b)** (with reg. 1(2))
- F99** Words in reg. 8(3) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **6(4)** (with regs. 1(4), 20(1)(3))

#### Commencement Information

- I8** Reg. 8 in force at 11.4.1988, see reg. 1

### Persons treated as available for employment

9.—(1) Except in a case to which regulation 10 (circumstances in which claimants are not to be treated as available for employment) applies, a claimant shall be treated as available for employment if, and only if—

- (a) he is available to be employed within the meaning of section 17(1)(a)(i) of the Social Security Act <sup>F100</sup> or Regulations made under it (requirement to be available to be employed for the purposes of unemployment benefit) in employment to which regulation 7 applies (meaning of employment); or
- (b) he is normally engaged for less than the number of hours prescribed in paragraph (c) of regulation 7 in respect of him in employment to which that regulation applies, and he is available, within the meaning of section 17(1)(a)(i) or Regulations made under it, for such further number of hours which would, in aggregate with the number of hours for which he is normally engaged, be not less than the number of hours prescribed in paragraph (c) of regulation 7 for his case; or
- (c) he satisfies the conditions in paragraph (2) and is attending—
  - (i) a course of education at an establishment recognised by the Secretary of State as being, or as comparable to, a school or college; or
  - (ii) a course of training or instruction analogous to a course for which a training allowance would be payable,
 and, in either case, he is prepared to terminate the course immediately a suitable vacancy becomes available to him.

(2) the conditions referred to in paragraph (1)(c) are that either—

- (a) the claimant was, for a continuous period of not less than three months falling immediately before the commencement date,—
  - (i) in receipt of a qualifying benefit; or
  - (ii) on a course of training or instruction organised by or on behalf of [<sup>F101</sup>Scottish Enterprise, Highlands and Islands Enterprise or] the [<sup>F102</sup>Secretary of State for Employment] as part of the Youth Training Scheme [<sup>F103</sup>or Youth Training]; or
- (b) during the period of six months falling immediately before the commencement date the claimant was—
  - (i) for a period, or periods in aggregate, of not less than three months in receipt of a qualifying benefit or on a course of training or instruction organised by or on behalf of [<sup>F104</sup>Scottish Enterprise, Highlands and Islands Enterprise or] the [<sup>F105</sup>Secretary of State for Employment] as part of the Youth Training Scheme [<sup>F106</sup>or Youth Training]; and
  - (ii) after the period referred to in head (i) of this sub-paragraph or, in the case of periods in aggregate, after the first such period and throughout the remainder of the six months for which that head did not apply to him, engaged in appropriate work;

and that the period of three months referred to in sub-paragraph (a) or, as the case may be, the period of six months referred to in sub-paragraph (b) fell wholly after the terminal date.

(3) In this regulation—

“appropriate work” means remunerative work for the purpose of section 20(3)(c) of the Act (conditions of entitlement to income support) or other work the emoluments from which are such as to disentitle the person engaged in it from a qualifying benefit;

“commencement date” means the date on which the claimant first attended the course of education or course of training or instruction;

“course” means a course in the pursuit of which the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course does not, subject to paragraph (4), exceed 21 hours a week;

“qualifying benefit” means unemployment benefit or [<sup>F107</sup>short-term incapacity benefit]<sup>F108</sup> or, in the case of a claimant who is required to be available for employment under section 20(3) (d) of the Act (conditions of entitlement to income support) or who is not so required under paragraph 5 of Schedule 1 (persons not required to be available by reason of sickness or incapacity), income support.

(4) In calculating the time spent in pursuit of a course for the purpose of this regulation, no account shall be taken of time occupied by meal breaks or spent on unsupervised study, whether undertaken on or off the premises of the educational establishment or place of instruction or training.

#### Textual Amendments

- F100** 1975 c. 14; section 17(1) was amended by the Social Security (No. 2) Act 1980 (c. 39), sections 3(1), 7(6) and the Schedule.
- F101** Words in reg. 9(2)(a)(ii) inserted (1.4.1991) by The Enterprise (Scotland) Consequential Amendments Order 1991 (S.I. 1991/387), arts. 1, 9(b)
- F102** Words in reg. 9(2)(a)(ii) substituted (8.4.1991) by The Income Support (General) Amendment Regulations 1991 (S.I. 1991/236), regs. 1(1)(b), 2(1)(b) (with reg. 1(2))
- F103** Words in reg. 9(2)(a)(ii) inserted (8.4.1991) by The Income Support (General) Amendment Regulations 1991 (S.I. 1991/236), regs. 1(1)(b), 2(4) (with reg. 1(2))
- F104** Words in reg. 9(2)(b)(i) inserted (1.4.1991) by The Enterprise (Scotland) Consequential Amendments Order 1991 (S.I. 1991/387), arts. 1, 9(b)
- F105** Words in reg. 9(2)(b)(i) substituted (8.4.1991) by The Income Support (General) Amendment Regulations 1991 (S.I. 1991/236), regs. 1(1)(b), 2(1)(b) (with reg. 1(2))
- F106** Words in reg. 9(2)(b)(i) inserted (8.4.1991) by The Income Support (General) Amendment Regulations 1991 (S.I. 1991/236), regs. 1(1)(b), 2(4) (with reg. 1(2))
- F107** Words in reg. 9(3) substituted (13.4.1995) by The Disability Working Allowance and Income Support (General) Amendment Regulations 1995 (S.I. 1995/482), regs. 1(1), 7 (with reg. 1(4))
- F108** See sections 12(1)(a) and (b) and 14 of the Social Security Act 1975 (c. 14); section 12(1)(a) and (b) was amended by the Social Security (No. 2) Act 1980 (c. 39), section 7(6) and the Health and Social Security Act 1984 (c. 48), Schedule 5, paragraph 2; section 14 was amended by the Social Security Pensions Act 1975 (c. 60), sections 18(1) and 65, Schedule 4, paragraph 39, the Social Security Act 1979 (c. 18) and section 21(4), Schedule 3, paragraph 6, the Social Security and Housing Benefits Act 1982 (c. 24), sections 39(3) and 48, Schedule 4, paragraph 9; the Social Security (No. 2) Act 1980 (c. 39), section 7 and the Schedule and the Social Security Act 1986 (c. 50), section 86, Schedule 10, paragraph 83.

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### Commencement Information

**I9** Reg. 9 in force at 11.4.1988, see reg. 1

### Circumstances in which claimants are not to be treated as available for employment

**10.**—(1) A claimant shall not be treated as available for employment if he is a person to whom any one of the following sub-paragraphs applies—

- (a) after a situation in any <sup>F109</sup>... employment has been properly notified to him as vacant or about to become vacant he has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him, and that situation is still vacant or open to application;
- (b) he has neglected to avail himself of a reasonable opportunity of <sup>F110</sup>... employment and that opportunity is still available to him;
- (c) he has failed to avail himself of a reasonable opportunity of short-term work which is available in the area in which he lives, and—
  - (i) he is aged 18 or over but under 45;
  - (ii) his partner, if any, is aged under 45;
  - (iii) there is no child or young person who is a member of his family;
  - (iv) his partner or, as the case may be, the claimant herself is not pregnant; and
  - (v) neither he nor his partner, if any, is mentally or physically disabled;
- (d) [<sup>F111</sup>subject to paragraphs (4) to (6),] he has placed restrictions on the nature, hours, rate of remuneration or locality or other conditions of employment which he is prepared to accept and as a consequence of those restrictions he has no reasonable prospects of securing employment; but this sub-paragraph shall not apply where—
  - (i) he is prevented from having reasonable prospects of securing employment consistent with those restrictions only as a result of adverse industrial conditions in the locality or localities concerned which may reasonably be regarded as temporary, and, having regard to all the circumstances, personal and other, the restrictions which he imposes are reasonable; or
  - <sup>F112</sup>(ii) the restrictions are reasonable in view of his physical or mental condition; or
  - (iii) he has a usual occupation and those restrictions relate to it and are consistent with conditions which are usual in that occupation]
- (e) having failed to comply with a written notice given or sent to him by or on behalf of the Secretary of State or the [<sup>F113</sup>Secretary of State for Employment] requesting him to report at a specified time, place and date to an officer of the Department of Health and Social Security, the Department of Employment [<sup>F114</sup>or a local education authority] for an interview in connection with his prospects of employment, he fails without good cause to comply with the requirements of a further notice given or sent to him within 14 days of the date specified in the first notice by or on behalf of the Secretary of State or, as the case may be, the Training Commission and requesting him to report as aforesaid at a time, place and date specified in the further notice for the purpose of such an interview;
- (f) he has been disallowed unemployment benefit on the ground that he failed to claim in the manner prescribed by regulation 4 of the Social Security (Claims and Payments) Regulations 1987 <sup>F115</sup> (making a claim for benefit) by virtue of the fact that the form approved by the Secretary of State for the purpose of claiming was not duly completed so far as it related to his availability for employment; or

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- (g) he is a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975 <sup>F116</sup> who is not entitled to unemployment benefit under the Social Security Act because he has failed to satisfy the additional condition for receipt of that benefit in paragraph (5) or (8) of regulation 8 of those Regulations (that he performed no work as a sea-going or on-shore share fisherman and that he has not neglected to avail himself of a reasonable opportunity of employment as a fisherman);
- <sup>F117</sup>(h) he is a student during the period of study, other than—
  - (i) one to whom paragraph 1, 2, <sup>F118</sup>7 to 7B], 11, 16 or 20 of Schedule 1 applies (persons not required to be available for employment) but in the case of paragraph 20 only where the student is a person to whom regulation 70 (3) (a) applies (certain persons from abroad); or
  - (ii) one who has a partner who is also a student, if either he or his partner is treated as responsible for a child or young person, but this exception shall apply only for the period of the summer vacation appropriate to his course.]
- (2) A determination that a claimant is not to be treated as available for employment—
  - (a) under paragraph (1)(a), shall apply for a period not exceeding—
    - (i) the period during which the situation in question remains vacant; or
    - (ii) <sup>F119</sup>26] weeks,whichever is the shorter;
  - (b) under paragraph (1)(b), shall apply for a period not exceeding—
    - (i) the period during which the opportunity is still available to him; or
    - (ii) <sup>F119</sup>26] weeks,whichever is the shorter;
  - (c) under paragraph (1)(c)—
    - (i) shall not apply until the claimant has been given 14 days' notice in writing and that period has expired, and then
    - (ii) shall apply for a period not exceeding the period during which the opportunity is still available to him or, if shorter, the period of <sup>F119</sup>26] weeks;
  - (d) under paragraph (1)(d), shall apply for so long as the claimant has no reasonable prospect of employment as a consequence of the restrictions referred to in that paragraph;
  - (e) under paragraph (1)(e), shall apply on the day specified in the further notice and any subsequent day falling before the day on which the claimant reports to an officer of the Department of Health and Social Security, the Department of Employment <sup>F120</sup>or a local education authority] at the place specified in the notice and there attends an interview in connection with his prospects of employment or before the day on which the Secretary of State or, as the case may be, the <sup>F121</sup>Secretary of State for Employment] rescinds the further notice, whichever event first occurs;
  - (f) under paragraph (1)(f), shall apply for so long as the claimant fails to claim in the manner referred to in that paragraph;
  - (g) under paragraph (1)(g) or (h), shall apply for so long as that paragraph continues to apply to him.
- (3) In this regulation—
  - <sup>F122</sup>(a) .....

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- (b) “properly notified” means notified by an officer acting on behalf of the Secretary of State, or by the [<sup>F123</sup>Secretary of State for Employment], a local education authority or some other recognised agency, or by or on behalf of an employer.

[<sup>F124</sup>(4) A determination that paragraph (1)(d) does not apply by reason of the circumstances prescribed in head (iii) of that paragraph shall have effect for a period not exceeding 13 weeks beginning—

- (a) in a case where the claimant is not entitled to unemployment benefit and has not been entitled to that benefit for any day since he was last in remunerative work, on the first day for which the claimant makes a claim for income Support since the last day on which he was in remunerative work, or vocational training in his usual occupation, or incapable of work;
- (b) in any other case, on the first day for which a claim for unemployment benefit is made since the claimant was last in remunerative work.]

[<sup>F124</sup>(5) In determining the length of the period for the purposes of paragraph (4) regard shall be had to—

- (a) the claimant’s usual occupation and any relevant skills and qualifications which he has acquired;
- (b) the length of the periods during which he has undergone training relevant to his usual occupation;
- (c) the length of the periods during which he has been employed in his usual occupation and the period since he was last so employed; and
- (d) the availability and location of employment in his usual occupation.]

[<sup>F124</sup>(6) For the purposes of paragraph (1)(d), in deciding whether a claimant has no reasonable prospects of securing employment regard shall be had, in particular, to the length of the period during which he has been unemployed.]

### Textual Amendments

- F109** Word in reg. 10(1)(a) omitted (9.10.1989) by virtue of [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **5(a)(i)**
- F110** Word in reg. 10(1)(b) omitted (9.10.1989) by virtue of [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **5(a)(i)**
- F111** Words in reg. 10(1)(d) inserted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **5(a)(ii)**
- F112** Reg. 10(1)(d)(ii)(iii) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **5(a)(ii)**
- F113** Words in reg. 10(1)(e) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **2(1)(c)** (with reg. 1(2))
- F114** Words in reg. 10(1)(e) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **2(3)** (with reg. 1(2))
- F115** S.I. 1987/1968.
- F116** S.I. 1975/529.
- F117** Reg. 10(1)(h) substituted (1.9.1990) by [The Social Security Benefits \(Student Loans and Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/1549\)](#), regs. 1(1)(a), **5(3)** (with reg. 7(1))
- F118** Words in reg. 10(1)(h)(i) substituted (1.9.1990) by [The Income-Related Benefits Amendment Regulations 1990 \(S.I. 1990/1657\)](#), regs. 1, **5(2)**
- F119** Word in reg. 10(2) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **7**

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- F120** Words in reg. 10(2)(e) substituted (8.4.1991) by The Income Support (General) Amendment Regulations 1991 (S.I. 1991/236), regs. 1(1)(b), **2(3)** (with reg. 1(2))
- F121** Words in reg. 10(2)(e) substituted (8.4.1991) by The Income Support (General) Amendment Regulations 1991 (S.I. 1991/236), regs. 1(1)(b), **2(1)(c)** (with reg. 1(2))
- F122** Reg. 10(3)(a) omitted (9.10.1989) by virtue of The Income Support (General) Amendment No. 2 Regulations 1989 (S.I. 1989/1323), regs. 1(1)(b), **5(b)**
- F123** Words in reg. 10(3)(b) substituted (8.4.1991) by The Income Support (General) Amendment Regulations 1991 (S.I. 1991/236), regs. 1(1)(b), **2(1)(c)** (with reg. 1(2))
- F124** Reg. 10(4)-(6) added (9.10.1989) by The Income Support (General) Amendment No. 2 Regulations 1989 (S.I. 1989/1323), regs. 1(1)(b), **5(c)**

#### **Commencement Information**

- I10** Reg. 10 in force at 11.4.1988, see reg. 1

### **[<sup>F125</sup> Actively seeking employment**

**10A.**—(1) A claimant shall not be required to be a person who is actively seeking employment where, by virtue of regulation 8 (persons not required to be available for employment), he is not required to be available for employment.

[<sup>F126</sup>(2) A claimant, other than a person to whom regulation 10(1)(h) applies, shall not be required to be a person who is actively seeking employment during any week in which—

- (a) the claimant—
  - (i) is a single woman and is pregnant, and
  - (ii) the adjudication officer is satisfied that, unless income support is paid, the claimant will suffer hardship; or
- (b) the claimant is a member of a married or unmarried couple where—
  - (i) one member of that couple is pregnant, and
  - (ii) the adjudication officer is satisfied that, unless income support is paid, that member will suffer hardship; or
- (c) the claimant is a member of a married or unmarried couple where—
  - (i) he or his partner, or both of them, are responsible for a child or young person, and
  - (ii) the adjudication officer is satisfied that, unless income support is paid, the child or young person will suffer hardship; or
- (d) the claimant's applicable amount includes a disability premium under Part III of Schedule 2 (premiums) and the adjudication officer is satisfied that, unless income support is paid, the person, whether the claimant or his partner, who satisfies the additional condition in paragraph 12 of that Schedule for the award of the premium will suffer hardship.]

(3) Subject to paragraph (4), a claimant shall be treated as actively seeking employment in any week if, and only if, he takes such steps in that week as he would be required to take under regulations made under subsection (2)(aa)(i) of Section 17 of the Social Security Act in order to be regarded as actively seeking employed earner's employment in that week for the purposes of that section.

(4) A claimant shall be treated as actively seeking employment in respect of any week for which he is, or would have been had he made a claim for unemployment benefit, deemed to have been actively seeking employment under regulations made under section 17(1)(a)(i) of the Social Security Act.

- (5) For the purposes of this regulation, in relation to a claimant,

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“week” has the meaning prescribed in regulations made under section 17(2)(aa)(ii) of the Social Security Act which—

- (a) if he is entitled to unemployment benefit, applies in his case; and
- (b) if he is not entitled to unemployment benefit, would have applied in his case if each of the days for which he claims income support would have fallen within a period of interruption of employment had he claimed unemployment benefit under that Act in respect of those days.]

#### Textual Amendments

**F125** Reg. 10A inserted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), 6

**F126** Reg. 10A(2) substituted (3.12.1992) by [The Income Support \(General\) Amendment \(No. 3\) Regulations 1992 \(S.I. 1992/2804\)](#), regs. 1(1), 2

#### Registration for employment

**11.**—(1) Subject to [<sup>F127</sup>paragraphs (2) and (2A)], a claimant who—

- (a) is aged less than 18; and
- (b) is required to be available for employment for the purposes of section 20(3)(d)(i) of the Act (conditions of entitlement to income support);

must also be registered for employment in accordance with paragraph (3).

(2) A claimant other than one to whom regulation 10(1)(h) (circumstances in which claimants are not to be treated as available for employment) applies and who would, but for this paragraph, be required to be registered for employment in accordance with paragraph (3), shall not be required so to register for employment if—

- [<sup>F128</sup>(a) an adjudication officer has determined for the purposes of section 171B of the Contributions and Benefits Act (the own occupation test) that that claimant is not incapable of work; and]
- (b) the claimant's medical practitioner continues to supply evidence of his incapacity for work in accordance with regulation 2 of the Social Security (Medical Evidence) Regulations 1976<sup>F129</sup> (evidence of incapacity); and
- (c) the claimant has made and is pursuing an appeal against the determination of an adjudication officer that he is not so incapable.

[<sup>F130</sup>(2A) A claimant, other than one to whom paragraph (2) or regulation 10(1)(h) applies, who would, but for this paragraph, be required to be registered for employment in accordance with paragraph (3), shall not be required so to register for employment if—

- (a) an adjudication officer has determined for the purposes of section 171C of the Contributions and Benefits Act (the all work test) that that claimant is not incapable of work; and
- (b) that claimant has made and is pursuing an appeal against that determination.]

(3) A claimant to whom paragraph (1) applies shall, except where the Secretary of State decides otherwise, be registered for employment by registering with the [<sup>F131</sup>Secretary of State for Employment] or a local education authority.



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### Textual Amendments

- F127** Words in reg. 11(1) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **8(2)** (with regs. 1(4), 20(2)(3))
- F128** Reg. 11(2)(a) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **8(3)** (with regs. 1(4), 20(2)(3))
- F129** S.I. 1976/615, the relevant amending instruments are S.I. 1982/699 and S.I. 1987/409.
- F130** Reg. 11(2A) inserted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **8(4)** (with regs. 1(4), 20(2)(3))
- F131** Words in reg. 11(3) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **2(1)(d)** (with reg. 1(2))

### Commencement Information

- I11** Reg. 11 in force at 11.4.1988, see reg. 1

### [<sup>F132</sup>Relevant Education

12.—(1) For the purposes of these Regulations a child or young person is to be treated as receiving relevant education if, and only if—

- (a) he is not receiving advanced education; but
- (b) he is receiving full-time education for the purposes of section 2 of the Child Benefit Act 1975 (meaning of child) or, as the case may be, he is treated as a child for the purposes of that section.

(2) For the purposes of this regulation “receiving advanced education” means participating in any course (whether full-time or part-time)—

- (a) leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education, [<sup>F133</sup>a higher national diploma or higher national certificate of either the Business & [<sup>F134</sup>Technology] Education Council] or the Scottish Vocational Education Council or a teaching qualification; or
- (b) any other course which is a course of a standard above ordinary national diploma, [<sup>F135</sup>a national diploma or national certificate of either the Business & [<sup>F134</sup>Technology] Education Council or the Scottish Vocational Education Council], a general certificate of education (advanced level), a Scottish certificate of education [<sup>F136</sup>(higher level)] or a Scottish certificate of sixth year studies.]

### Textual Amendments

- F132** Reg. 12 substituted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **5**
- F133** Words in reg. 12(2)(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **14(a)**
- F134** Word in reg. 12(2) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **4**
- F135** Words in reg. 12(2)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **14(b)(i)**

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**F136** Words in reg. 12(2)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **14(b)(ii)**

#### Commencement Information

**I12** Reg. 12 in force at 11.4.1988, see reg. 1

### Circumstances in which persons in relevant education are to be entitled to income support

**13.**—(1) Notwithstanding that a person is to be treated as receiving relevant education under regulation 12 (relevant education) he shall, if paragraph (2) applies to him and he satisfies the other conditions of entitlement to income support, be entitled to income support.

(2) This paragraph applies to [<sup>F137</sup>a person aged 16 or over but under 19 (hereinafter referred to as an eligible person)] who—

- (a) is the parent of a child for whom he is treated as responsible under regulation 15 (circumstances in which a person is to be treated as responsible or not responsible for another) and who is treated as a member of his household under regulation 16 (circumstances in which a person is to be treated as being or not being a member of the household); or
- (b) is severely mentally or physically handicapped and because of that he would be unlikely, even if he were available for employment, to obtain employment within the next 12 months; or
- (c) has no parent nor any person acting in the place of his parents; or
- [<sup>F138</sup>(d) of necessity has to live away from his [<sup>F139</sup>parents and any] person acting in the place of his parents because—
  - (i) he is estranged from his [<sup>F139</sup>parents and that person]; or
  - (ii) he is in physical or moral danger; or
  - (iii) there is a serious risk to his physical or mental health;]
- [<sup>F140</sup>(dd) has ceased to live in accommodation provided for him by a local authority under Part III of the Children Act 1989(local authority support for children and families) and is of necessity living away from his parents and any person acting in place of his parents;]
- (e) is living away from his parents and any person acting in the place of his parents in a case where his parents are or, as the case may be, that person is unable financially to support him and—
  - (i) chronically sick or mentally or physically disabled; or
  - (ii) detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
  - (iii) prohibited from entering or re-entering Great Britain; or
- (f) is attending a course of education to which regulation 9 (persons treated as available for employment) applies and satisfies the other conditions of that regulation; or
- (g) has completed or terminated such a course and while attending that course satisfied the other conditions of that regulation; or
- (h) he is a person to whom paragraph 16 of Schedule 1 (refugees not required to be available for employment) applies.

(3) In this regulation—

[<sup>F141</sup>(a) any reference to a person acting in the place of an eligible person's parents includes—

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- (i) for the purposes of paragraph (2)(c), (d) and (dd), a reference to a local authority or voluntary organisation where the eligible person is being looked after by them under a relevant enactment or where the eligible person is placed by the local authority or voluntary organisation with another person, that other person, whether or not a payment is made to him;
- (ii) for the purposes of paragraph (2)(e), the person with whom the person is so placed;]
- (b) “chronically sick or mentally or physically disabled” means, in relation to a person to whom that expression refers, a person—
  - (i) in respect of whom the condition specified in paragraph 12(1) of Schedule 2 (additional condition for the higher pensioner and disability premiums) is satisfied; or
  - (ii) in respect of whom an amount under article 26 of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983<sup>F142</sup> (provision of expenses in respect of appropriate aids for disabled living) is payable in respect of the cost of providing a vehicle, or maintaining a vehicle to a disabled person; or
  - (iii) who is substantially and permanently disabled.

#### Textual Amendments

- F137** Words in reg. 13(2) substituted (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **6(a)** (with reg. 1(2))
- F138** Reg. 13(2)(d) substituted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **4** (with reg. 13)
- F139** Words in reg. 13(2)(d) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **5** (with reg. 1(2))
- F140** Reg. 13(2)(dd) inserted (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **3(1)** (with reg. 1(2))
- F141** Reg. 13(3)(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), **Sch. para. 2** (with Sch. para. 11)
- F142** S.I. 1983/883.

#### Commencement Information

- I13** Reg. 13 in force at 11.4.1988, see [reg. 1](#)

#### <sup>F143</sup>Persons under 18 years

**13A.**—(1) A person to whom this regulation applies and for the period specified in relation to him is a person within the prescribed circumstances and period mentioned in section 20(3)(a) of the Act (conditions of entitlement for persons under 18).

- (2) This regulation applies to a person of or over the age of 16—
  - (a) to whom any paragraph of Schedule 1A (circumstances in which a person aged 16 or 17 is eligible for income support) applies; and
  - (b) for the period for which that paragraph applies or, if the relevant date specified in paragraph (3) falls within that period, for so much thereof [<sup>F144</sup>as falls on or before] that date.
- (3) In the case of a person—

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- (a) to whom any paragraph in Part I (persons eligible until 18) of Schedule 1A applies, the relevant date [<sup>F145</sup>is the day before the date] on which he attains the age of 18;
  - (b) other than one to whom sub-paragraph (a) applies, to whom any paragraph in Part II (persons eligible until the relevant date) of that Schedule applies, the relevant date is the date determined in accordance with paragraph (7).
- (4) This regulation also applies to a person of, or over, the age of 16, other than one to whom any paragraph in [<sup>F146</sup>Part I of Schedule 1A] applies who is—
- (a) incapable of work and training under the youth training scheme [<sup>F147</sup>or youth training] by reason of some disease or bodily or mental disablement if, in the opinion of a medical practitioner, that incapacity is likely to end within a period of less than 12 months; or
  - <sup>F148</sup>(b) . . . . .
  - (c) a registered person who has been discharged from any institution to which the Prison Act 1952 applied or from custody under the Criminal Procedure (Scotland) Act 1975 after the relevant date determined in accordance with paragraph (7) and who is within the circumstances specified in Part II of Schedule 1A.
  - [ a registered person who has ceased to live in accommodation provided for him by a local <sup>F149</sup>(d) authority under Part III of the Children Act 1989 (local authority support for children and families) and is of necessity living away from his parents and any person acting in place of his parents.]
- [<sup>F150</sup>(5) Paragraph (4)(a) shall have effect for a period—
- (a) beginning on the date on which paragraph (4)(a) applies to that person which first falls after the relevant date determined in accordance with paragraph (7); and
  - (b) ending on the day before the date on which that person attains the age of 18 or the date on which paragraph (4)(a) ceases to apply to him, whichever first occurs.]
- (6) Paragraph (4)(c) shall have effect for a period—
- (a) beginning on [<sup>F151</sup>the date] on which paragraph (4)(c) applies to that person which first falls <sup>F152</sup>... after the relevant date determined in accordance with paragraph (7); and
  - [<sup>F153</sup>(b) ending on the last day of the period of eight weeks beginning with the date specified in sub-paragraph (a) or on the day before the date on which that person attains the age of 18, whichever first occurs.]
- [ <sup>F154</sup>(6A) Paragraph (4)(d) shall have effect for a period—
- (a) beginning on the day on which that paragraph first applies to that person; and
  - (b) ending on the day before the day on which that person attains the age of 18 or the day at the end of a period of 8 weeks immediately following the day on which paragraph (4)(d) first had effect in relation to him, whichever is the earlier.]
- [ <sup>F154</sup>(6B) The period mentioned in paragraph (6A) may include any week in which regulation 7 of the Child Benefit (General) Regulations 1976 (circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child) also applies to that person.]
- (7) For the purposes of paragraphs (3)(b) and (4) to (6)—
- (a) in the case of a person who ceases to be treated as a child by virtue of section 2(1)(a) of the Child Benefit Act 1975 (meaning of child) or regulation 7 of the Child Benefit (General) Regulations 1976 (circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child)—

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- (i) on or after the first Monday in September, but before the first Monday in January of the following year, the relevant date is the last day of the week which falls immediately before the week which includes the first Monday in January in that year;
  - (ii) on or after the first Monday in January but before the Monday following Easter Monday in that year, the relevant date is the last day of the week which falls 12 weeks after the week which includes the first Monday in January in that year;
  - (iii) at any other time of the year, the relevant date is last day of the week which falls 12 weeks after the week which includes the Monday following Easter Monday in that year;
- (b) in the case of a person who was not treated as a child by virtue of section 2(1)(a) of that Act immediately before he was 16 and who has not been treated as a child by virtue of regulation 7 of those Regulations (interruption of full-time education), the relevant date is the date determined in accordance with sub-paragraph (a)(i), (ii) or (iii) as if he had ceased full-time education on the first date on which education ceased to be compulsory for a person of his age in England and Wales or, if he is resident in Scotland, in Scotland.]

[<sup>F155</sup>(8) In this regulation, any reference to a person acting in place of a registered person's parents has the same meaning as it has in Schedule 1A by virtue of paragraph 10 of that Schedule.]

#### Textual Amendments

- F143** Reg. 13A inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), **4**
- F144** Words in reg. 13A(2)(b) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **6(a)** (with reg. 1(2))
- F145** Words in reg. 13A(3)(a) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **6(b)** (with reg. 1(2))
- F146** Words in reg. 13A(4) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **6(c)(i)** (with reg. 1(2))
- F147** Words in reg. 13A(4)(a) inserted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), **regs. 1(1)(b), 2(4)** (with reg. 1(2))
- F148** Reg. 13A(4)(b) omitted (8.4.1991) by virtue of [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **6(c)(ii)** (with reg. 1(2))
- F149** Reg. 13A(4)(d) added (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **3(2)(a)** (with reg. 1(2))
- F150** Reg. 13A(5) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **6(d)** (with reg. 1(2))
- F151** Words in reg. 13A(6)(a) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **6(e)(i)** (with reg. 1(2))
- F152** Words in reg. 13A(6)(a) omitted (8.4.1991) by virtue of [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **6(e)(i)** (with reg. 1(2))
- F153** Reg. 13A(6)(b) substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **6(e)(ii)** (with reg. 1(2))
- F154** Reg. 13A(6A)(6B) inserted (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **3(2)(b)** (with reg. 1(2))
- F155** Reg. 13A(8) added (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **3(2)(c)** (with reg. 1(2))

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## PART III

### MEMBERSHIP OF THE FAMILY

#### Persons of a prescribed description

14.—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 20(11) of the Act as it applies to income support (definition of the family) and section 23(1) [F156 and (3)] of the Act (trade disputes) is a person aged 16 or over but under 19 who is treated as a child for the purposes of section 2 of the Child Benefit Act 1975 (meaning of child), and in these Regulations such a person is referred to as a “young person”.

(2) Paragraph (1) shall not apply to [F157 a person who is receiving advanced education within the meaning of regulation 12(2) (relevant education) or to] a person who is entitled to income support or would, but for section 20(9) of the Act (provision against dual entitlement of members of family), be so entitled.

#### Textual Amendments

F156 Words in reg. 14(1) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), 5

F157 Words in reg. 14(2) inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), 6

#### Commencement Information

I14 Reg. 14 in force at 11.4.1988, see reg. 1

#### Circumstances in which a person is to be treated as responsible or not responsible for another

15.—[F158(1) Subject to the following provisions of this regulation, a person is to be treated as responsible for a child or young person for whom he is receiving child benefit.

(1A) In a case where a child (“the first child”) is in receipt of child benefit in respect of another child (“the second child”), the person treated as responsible for the first child in accordance with the provisions of this regulation shall also be treated as responsible for the second child.

(2) In the case of a child or young person in respect of whom no person is receiving child benefit, the person who shall be treated as responsible for that child or young person shall be—

- (a) except where sub-paragraph (b) applies, the person with whom the child or young person usually lives; or
- (b) where only one claim for child benefit has been made in respect of the child or young person, the person who made that claim.]

(3) Where regulation 16(6) (circumstances in which a person is to be treated as being or not being a member of the household) applies in respect of a child or young person, that child or young person shall be treated as the responsibility of the claimant for that part of the week for which he is under that regulation treated as being a member of the claimant's household.

(4) Except where paragraph (3) applies, for the purposes of these Regulations a child or young person shall be treated as the responsibility of only one person in any benefit week and any person other than the one treated as responsible for the child or young person under this regulation shall be treated as not so responsible.

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### Textual Amendments

**F158** Reg. 15(1)(1A)(2) substituted for reg. 15(1)(2) (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), 5

### Commencement Information

**I15** Reg. 15 in force at 11.4.1988, see reg. 1

## Circumstances in which a person is to be treated as being or not being a member of the household

**16.**—(1) Subject to paragraphs (2) to (5), the claimant and any partner and, where the claimant or his partner is treated as responsible under regulation 15 (circumstances in which a person is to be treated as responsible or not responsible for another) for a child or young person, that child or young person and any child of that child or young person shall be treated as members of the same household [<sup>F159</sup>notwithstanding that any of them][<sup>F160</sup>is temporarily living away from the other members of his family].

[<sup>F161</sup>(2) Paragraph (1) shall not apply to a person who is living away from the other members of his family where—

- (a) that person does not intend to resume living with the other members of his family; or
- (b) his absence from the other members of his family is likely to exceed 52 weeks, unless there are exceptional circumstances (for example the person is in hospital or otherwise has no control over the length of his absence), and the absence is unlikely to be substantially more than 52 weeks.]

(3) Paragraph (1) shall not apply in respect of any member of a couple or of a polygamous marriage where—

- (a) one, both or all of them are patients detained in a hospital provided under section 4 of the National Health Service Act 1977 <sup>F162</sup> (special hospitals) or section 90(1) of the Mental Health (Scotland) Act 1984 <sup>F163</sup> (provision of hospitals for patients requiring special security); or
- (b) one, both or all of them are detained in custody pending trial or sentence upon conviction or whilst serving a sentence imposed by a court; or

<sup>F164</sup>(c) .....

- (d) the claimant is abroad and does not satisfy the conditions of regulation 4 (temporary absence from Britain); or
- (e) one of them is permanently in residential accommodation or a residential care home or a residential nursing home.

(4) A child or young person shall not be treated as a member of the claimant's household where he is—

- [<sup>F165</sup>(a) placed with the claimant or his partner by a local authority under section 23(2)(a) of the Children Act 1989 or by a voluntary organisation under section 59(1)(a) of that Act; or
- (b) placed with the claimant or his partner prior to adoption; or]
- (c) placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations 1983 <sup>F166</sup> or the Adoption Agencies (Scotland) Regulations 1984<sup>F167</sup>.

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(5) Subject to paragraph (6), paragraph (1) shall not apply to a child or young person who is not living with the claimant [<sup>F168</sup>and who]—

(a) [<sup>F169</sup>in a case which does not fall within sub-paragraph (aa),] has been continuously absent from Great Britain for a period of more than four weeks commencing—

- (i) where he went abroad before the date of claim for income support, with that date;
- (ii) in any other case, [<sup>F170</sup>on the day which immediately follows the day] on which he went abroad; or

[<sup>F171</sup>(aa) where regulation 4(3) or paragraph 11A or 12A of Schedule 7 (temporary absence abroad for the treatment of a child or young person) applies, has been continuously absent from Great Britain for a period of more than 8 weeks, that period of 8 weeks commencing—

- (i) where he went abroad before the date of the claim for income support, on the date of that claim;
- (ii) in any other case, on the day which immediately follows the day on which he went abroad; or]

(b) has been an in-patient or in [<sup>F172</sup>accommodation provided under any of the provisions referred to in [<sup>F173</sup>any of sub-paragraphs (a) to (d) (<sup>F174</sup>excluding heads (i) and (ii)] of sub-paragraph (d) of the definition of residential accommodation”] in regulation 21(3)] for a continuous period of more than 12 weeks commencing—

- (i) where he became an in-patient or, as the case may be, entered that accommodation before the date of the claim for income support, with that date; or
- (ii) in any other case, with the date on which he became an in-patient or entered that accommodation,

and, in either case, has not been in regular contact with either the claimant or any member of the claimant's household; or

[<sup>F175</sup>(c) is being looked after by a local authority under a relevant enactment; or

- (d) has been placed with a person other than the claimant prior to adoption; or]
- (e) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations 1983 or the Adoption Agencies (Scotland) Regulations 1984; or
- (f) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court.

(6) A child or young person to whom any of the circumstances mentioned in sub-paragraphs (c) or (f) of paragraph (5) applies shall be treated as being a member of the claimant's household only for that part of any benefit week where that child or young person lives with the claimant.

(7) Where a child or young person for the purposes of attending the educational establishment at which he is receiving relevant education is living with the claimant or his partner and neither one is treated as responsible for that child or young person that child or young person shall be treated as being a member of the household of the person treated as responsible for him and shall not be treated as a member of the claimant's household.

(8) In this regulation—

[<sup>F176</sup>(a) “relevant enactment” means the Army Act 1955, the Social Work (Scotland) Act 1968, the Matrimonial Causes Act 1973, the Adoption (Scotland) Act 1978, the Family Law Act 1986 and the Children Act 1989]

(b) “voluntary organisation” has the meaning assigned to it in the [<sup>F177</sup>Children Act 1989] or, in Scotland, the Social Work (Scotland) Act 1968.



## Textual Amendments

- F159** Words in reg. 16(1) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **8(a)**
- F160** Words in [reg. 16\(1\)](#) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **6(2)**
- F161** [Reg. 16\(2\)](#) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **6(3)**
- F162** [1977 c. 49](#); section 4 was amended by section 148, Schedule 4, paragraph 47 of the [Mental Health Act 1983 \(c. 20\)](#).
- F163** [1984 c. 36](#).
- F164** [Reg. 16\(3\)\(c\)](#) omitted (1.4.1993) by virtue of [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), reg. 1(1), **Sch. 1 para. 1**
- F165** [Reg. 16\(4\)\(a\)\(b\)](#) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), **Sch. para. 3(a)** (with **Sch. para. 11**)
- F166** [S.I. 1983/1964](#).
- F167** [S.I. 1984/988](#).
- F168** Words in reg. 16(5) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **8(d)(i)**
- F169** Words in reg. 16(5)(a) inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **7(a)**
- F170** Words in reg. 16(5)(a) substituted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **7(a)**
- F171** [Reg. 16\(5\)\(aa\)](#) inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **7(b)**
- F172** Words in reg. 16(5)(b) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **8(d)(ii)**
- F173** Words in reg. 16(5)(b) substituted (with effect in accordance with reg. 1(1)(a) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **3**
- F174** Words in reg. 16(5)(b) substituted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 3**
- F175** [Reg. 16\(5\)\(c\)\(d\)](#) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), **Sch. para. 3(b)** (with **Sch. para. 11**)
- F176** [Reg. 16\(8\)\(a\)](#) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), **Sch. para. 3(c)(i)** (with **Sch. para. 11**)
- F177** Words in reg. 16(8)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), **Sch. para. 3(c)(ii)** (with **Sch. para. 11**)

## Commencement Information

- I16** [Reg. 16](#) in force at 11.4.1988, see [reg. 1](#)

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## PART IV

### APPLICABLE AMOUNTS

#### Applicable amounts

17.—(1) Subject to regulations 18 to 22 and 70 (applicable amounts in other cases and reductions in applicable amounts and urgent cases), a claimant's weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case:

- (a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1 (1), (2) or (3), as the case may be, of Schedule 2;
- (b) an amount determined in accordance with paragraph 2 of Schedule 2 in respect of any child or young person who is a member of his family, except a child or young person whose capital, if calculated in accordance with Part V in like manner as for the claimant, [<sup>F178</sup>except as provided in regulation 44(1) (modifications in respect of children and young persons)], would exceed £3,000;
- [<sup>F179</sup>(b)] an amount in respect of himself, or where the claimant is a member of a family, an amount in respect of any member of the family aged 16 or over, determined in accordance with paragraph 2A of Schedule 2 (residential allowance);]
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part II of Schedule 2 (family premium);
- (d) the amount of any premiums which may be applicable to him, determined in accordance with Parts III and IV of Schedule 2 (premiums);
- (e) any amounts determined in accordance with Schedule 3 (housing costs) which may be applicable to him in respect of mortgage interest payments or such other housing costs as are prescribed in that Schedule.
- [<sup>F180</sup>(f) any amounts determined in accordance with [<sup>F181</sup>paragraphs (2) to (7)].]
- [<sup>F182</sup>(g) the amount of the protected sum which may be applicable to him determined in accordance with Schedule 3A][<sup>F183</sup>or, as the case may be, 3B].

[<sup>F184</sup>(2) Where —

- (a) a claimant has throughout the period beginning on 11th April 1988 and ending immediately before the coming into force of paragraphs 25 to 28 of Schedule 10 (capital to be disregarded) failed to satisfy the capital condition in section 22(6) of the Act (no entitlement to benefit if capital exceeds prescribed amount); and
- (b) as a consequence he is not entitled to any transitional addition, special transitional addition or personal expenses addition under Part II of the Transitional Regulations; and
- (c) had those paragraphs been in force on 11th April 1988 he would have satisfied that condition and been entitled to any such addition,

the amount applicable under this paragraph shall, subject to paragraph (3), be equal to the amount of any transitional addition, special transitional addition and personal expenses addition to which he would be entitled under Part II of the Transitional Regulations had he been entitled to any such addition in the week commencing 11th April 1988.]

[<sup>F184</sup>(3) For the purposes of paragraph (2), in determining a claimant's total benefit income in his second benefit week for the purpose of calculating the amount of any transitional addition to which he would have been entitled, no account shall be taken of any payment referred to in paragraph (1) (j) of regulation 9 of the Transitional Regulations (total benefit income) which is made in respect of that week to compensate for the loss of entitlement to income support.]

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[<sup>F184</sup>(4) Subject to paragraph (6), where —

- (a) the claimant or any member of his family was temporarily absent from his home in the claimant's first or second benefit week (or both), because he was —
  - (i) a patient; or
  - (ii) outside Great Britain for the purpose of receiving treatment for any disease or bodily or mental disablement or for the purpose of accompanying a child or young person who is outside Great Britain for the purpose of receiving such treatment; or
  - (iii) in a residential care or nursing home or in accommodation provided under any of the provisions referred to in any of sub-paragraphs (a) to (d) of the definition of residential accommodation in regulation 21(3) (special cases); or
  - (iv) in the care of a local authority under a relevant enactment; or
  - (v) staying with a person who was contributing to his maintenance; and
- (b) as a result —
  - (i) in the claimant's first benefit week his requirements for the purpose of calculating his entitlement to supplementary benefit were increased or reduced or he was not entitled to that benefit; or
  - (ii) in the claimant's second benefit week his applicable amount was increased or reduced or he was not entitled to income support; and
- (c) the period during which his requirements were, or his applicable amount was, increased or reduced, or he was not entitled to benefit, or any one or more of those circumstances existed, did not exceed 8 weeks,

the amount applicable under this paragraph shall be equal to the amount determined under paragraph (5).]

[<sup>F184</sup>(5) The amount for the purposes of paragraph (4) shall be an amount equal to the difference between —

- (a) the amount that his total benefit income in his first benefit week would have been had he been entitled in respect of that week to supplementary benefit calculated on the basis that he or any member of his family had not been absent from the home; and, if less,
- (b) the amount of his total benefit income in the first complete week after the period of temporary absence ends; but for the purpose of calculating his total benefit income in that week —
  - (i) no account shall be taken of any payment referred to in paragraph (1)(j) of regulation 9 of the Transitional Regulations which is made in respect of that week to compensate for the loss (in whole or in part) of entitlement to income support; and
  - (ii) if the period of temporary absence ends after the coming into force of paragraph (4), the amount of income support to be taken into account shall, notwithstanding regulation 9(6) of the Transitional Regulations, be calculated as if that paragraph were not in force.]

[<sup>F184</sup>(6) The amount under paragraph (4) shall cease to be applicable to a claimant if he ceases to be entitled to income support for a period exceeding [<sup>F185</sup>the permitted period determined in accordance with regulation 3A (permitted period)].]

[<sup>F186</sup>(6A) For the purposes of paragraph (6), where a claimant has ceased to be entitled to income support because he or his partner is participating in arrangements for training made under section 2 of the Employment and Training Act 1973 [<sup>F187</sup>or section 2 of the Enterprise and New Towns (Scotland) Act 1990] or attending a course at an employment rehabilitation centre established under that section

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[<sup>F188</sup> of the 1973 Act], he shall be treated as if he had been entitled to income support for the period during which he or his partner is participating in such arrangements or attending such a course.]

[<sup>F184</sup>(7) In this Regulation —

“first benefit week” and “second benefit week” have the meanings given to those expressions in regulations 2(1) of the Transitional Regulations and shall also include the week which would have been the claimant’s “first benefit week” or, as the case may be, “second benefit week” had he been entitled to supplementary benefit or, as the case may be, income support in that week;

“total benefit income” has, subject to paragraphs (3) and (5)(b), the same meaning as in regulation 9 of the Transitional Regulations;

“Transitional Regulations” means the Income Support (Transitional) Regulations 1987.]

#### Textual Amendments

- F178** Words in reg. 17(1)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **7**
- F179** Reg. 17(1)(bb) inserted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), regs. 1(1), **2(1)(b)**
- F180** Reg. 17(f) added (30.5.1988) by [The Income Support \(General\) Amendment No. 2 Regulations 1988 \(S.I. 1988/910\)](#), regs. 1(1), **2**
- F181** Words in reg. 17(1)(f) substituted (10.4.1989) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 11(a)** (with reg. 28)
- F182** Reg. 17(1)(g) added (10.4.1989) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 11(b)** (with reg. 28)
- F183** Words in reg. 17(1)(g) added (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 17**
- F184** Reg. 17(2)-(7) added (30.5.1988) by [The Income Support \(General\) Amendment No. 2 Regulations 1988 \(S.I. 1988/910\)](#), regs. 1(1), **2**
- F185** Words in reg. 17(6) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **4(a)**
- F186** Reg. 17(6A) inserted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **4(b)**
- F187** Words in reg. 17(6A) inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, 2, **Sch.**
- F188** Words in reg. 17(6A) inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, **9(c)**

#### Modifications etc. (not altering text)

- C2** [Reg. 17\(1\)\(b\)](#) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(2)**

#### Commencement Information

- I17** Reg. 17 in force at 11.4.1988, see reg. 1

### Polygamous marriages

**18.**—[<sup>F189</sup>(1)] [<sup>F190</sup>Subject to paragraph (2) and regulations] 19 to 22 and 70 (applicable amounts in other cases and reductions in applicable amounts and urgent cases), where a claimant is a member of a polygamous marriage his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case:

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- (a) the highest amount applicable to him and one of his partners determined in accordance with sub-paragraph (3) of paragraph 1 of Schedule 2 as if he and that partner were a couple;
- (b) an amount equal to the difference between the amounts specified in [<sup>F191</sup>sub-paragraphs (3)(c)][<sup>F192</sup>and (1)(e)] of paragraph 1 of Schedule 2 in respect of each of his other partners;
- (c) an amount determined in accordance with paragraph 2 of Schedule 2 (applicable amounts) in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household except a child or young person whose capital, if calculated in accordance with Part V in like manner as for the claimant, [<sup>F193</sup>except as provided in regulation 44(1) (modifications in respect of children and young persons)], would exceed £3,000;
- [<sup>F194</sup>(cc) an amount, whether in respect of the claimant or any member of his household aged 16 or over, determined in accordance with paragraph 2A of Schedule 2 (residential allowance);]
- (d) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part II of Schedule 2 (family premiums);
- (e) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 2 (premiums);
- (f) any amounts determined in accordance with Schedule 3 (housing costs) which may be applicable to him in respect of mortgage interest payments or such other housing costs as are prescribed in that Schedule.
- [<sup>F195</sup>(g) any amount determined in accordance with regulation 17(1)(f) (applicable amounts);]
- [<sup>F196</sup>(h) the amount of the protected sum which may be applicable to him determined in accordance with Schedule 3A][<sup>F197</sup>or, as the case may be, 3B].
- [<sup>F198</sup>(2) In the case of a partner who is aged less than 18, the amount which applies in respect of that partner shall be nil unless—
  - (a) that partner is treated as responsible for a child, or
  - (b) that partner is a person who—
    - (i) had he not been a member of a polygamous marriage would have been eligible for income support by virtue of regulation 13A (circumstances in which a person aged 16 or 17 is eligible for income support); or
    - (ii) is a person in respect of whom there is a direction under section 20(4A) of the Act (income support to avoid severe hardship).]

#### Textual Amendments

- F189** Reg. 18 renumbered as reg. 18(1) (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), **5(a)**
- F190** Words in reg. 18(1) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), **5(a)**
- F191** Words in reg. 18(1)(b) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), **5(b)**
- F192** Words in reg. 18(1)(b) substituted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **5**
- F193** Words in reg. 18(1)(c) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **8**

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- F194** Reg. 18(1)(cc) inserted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), regs. 1(1), **2(1)(c)**
- F195** Reg. 18(1)(g) added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **6**
- F196** Reg. 18(1)(h) added (10.4.1989) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 12** (with reg. 28)
- F197** Words in reg. 18(1)(h) added (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 17**
- F198** Reg. 18(2) added (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), **5(c)**

#### **Modifications etc. (not altering text)**

- C3** Reg. 18(1)(c) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up Rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(2)**

#### **Commencement Information**

- I18** Reg. 18 in force at 11.4.1988, see reg. 1

### **Applicable amounts for persons in residential care and nursing homes**

**19.**—<sup>F199</sup><sup>F200</sup>(1) Subject to regulation 22 (reduction of applicable amounts) where a claimant has a preserved right and either—

- (a) lives in a residential care or nursing home; or
- (b) is a member of a family and he and the members of his family live in such a home,]

his weekly applicable amount shall, except in a case to which regulation 21 (applicable amounts in special cases) or Part II of Schedule 4 (persons to whom regulation 19 does not apply) applies, be calculated in accordance with Part I of that Schedule.]

<sup>F201</sup>(1ZA) A person to whom paragraph (1) applies shall be treated as not being severely disabled.]

<sup>F202</sup>(1ZB) In this regulation a person has a preserved right, subject to paragraphs (1ZE) and (1ZF), where—

- (a) on 31st March 1993, he was living in a residential care home or a nursing home, and—
  - (i) was entitled to income support for the benefit week in which that day fell and his applicable amount was calculated in accordance with Part I of Schedule 4; or
  - (ii) was not in that week entitled to income support because he was able to meet the cost of the accommodation from other sources available to him, but subsequently becomes entitled to income support; or

[ was not in that week entitled to income support, but was residing with his partner as <sup>F203</sup>(iii) a member of a couple on the relevant date where the partner was a person to whom head (i) or (ii) applies; or]

- (b) he would have been living in a residential care home or nursing home on 31st March 1993 but for an absence which, including that day, does not exceed—
  - (i) except in a case to which head (ii) applies—
    - (aa) where the person was before his absence a temporary resident in the home, 4 weeks, or

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- (bb) where the person was before his absence a permanent resident in the home, 13 weeks; or
- (ii) where throughout the period of absence the person was a patient, 52 weeks, and the provisions of sub-paragraph (a) would have applied to him but for that absence.
- (1ZC) Subject to paragraphs (1ZD), (1ZE) and (1ZF), a person also has a preserved right where—
- (a) on 31st March 1993 he was living in a residential care home or nursing home within the meaning of paragraph (3) as then in force, and was entitled to income support but his applicable amount was not calculated in accordance with Part I of Schedule 4 because he was a person to whom paragraph 14 of Schedule 4 applied (accommodation provided by a close relative); and
- (b) after 31st March 1993, either—
- (i) he moved from the home in which he was residing on that date to another residential care home or nursing home, or
- (ii) the ownership of the home changed,
- and in the home to which he moved, or as the case may be, following the change of ownership, the accommodation and meals (if any) are provided for him by a person other than a close relative of his [<sup>F204</sup>or of any member] of his family, and are provided on a commercial basis.
- (1ZD) Where a person has a preserved right under paragraph (1ZC), that right shall commence on the first full day of residence in the residential care home or nursing home to which he moved, or as the case may be, the day after the ownership of the [<sup>F205</sup>home] changed.
- (1ZE) [<sup>F206</sup>In England and Wales,] a person does not have a preserved right by virtue of paragraph (1ZB)(a)(ii) or (1ZC) where the residential care home in which he was living provided both board and personal care for less than 4 persons.
- [<sup>F207</sup>(1ZEA) Where, in Scotland, a person would have had a preserved right by virtue of paragraph (1ZB)(a)(ii) or (1ZC) but for the provisions of paragraph (1ZE) as it originally had effect, that person shall be treated from the date this regulation has effect in respect of him as though the first two paragraphs referred to continued to have effect in his case.]
- (1ZF) Paragraphs (1ZB) and (1ZC) shall cease to apply to a person who has a preserved right where he is absent from a residential care home or nursing home and that absence exceeds a period of—
- (a) except in a case to which sub-paragraph (b) applies—
- (i) 4 weeks, where the person was before his absence a temporary resident in the home, or,
- (ii) 13 weeks, where the person was before his absence a permanent resident in the home; or
- (b) 52 weeks where throughout the period of absence the person was a patient.
- (a) (1ZG) (a) A person who acquired a preserved right under paragraph (1ZB) or (1ZC) shall cease to have that right where either—
- (i) he moves from the home he resided in, or would but for an absence specified in paragraph (1ZB)(b) have resided in, on 31st March 1993 to another residential care home or nursing home, or
- (ii) the ownership of that home changes;

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and in the home to which he moves or, as the case may be, following the change of ownership, the accommodation and meals (if any) are provided for him by a close relative of his [<sup>F208</sup>or of any member] of his family, [<sup>F208</sup>or are provided] otherwise than on a commercial basis;

(b) a preserved right acquired under paragraph (1ZB) or (1ZC) which ceased to apply to a person in accordance with sub-paragraph (a) shall, notwithstanding that paragraph, revive and again apply in his case where—

(i) he moves from the home mentioned in sub-paragraph (a)(i) to another residential care home or nursing home, or

(ii) the ownership of that home changes, or in the case of a home mentioned in sub-paragraph (a)(ii), changes again,

and in the home to which he moves or, as the case may be, following the change or further change of ownership, the accommodation and meals (if any) are provided for him otherwise than by a close relative of his [<sup>F209</sup>or of any member] of his family, and are provided on a commercial basis.

(1ZH) For the purposes of paragraphs (1ZB) and (1ZF) a person is a permanent resident in a residential care home or nursing home where the home is his principal place of abode, and a temporary resident where it is not.

(1ZJ) For the avoidance of doubt, the expression “residential care home” in paragraphs (1ZB) and (1ZE) has the meaning it bore on 31st March 1993.]

[<sup>F210</sup>(1ZK) Where a person—

(a) formerly had a preserved right by virtue of paragraph (1ZB); and

(b) on 1st April 1993 was living in a home which was exempt from registration under Part I of the Registered Homes Act 1984 pursuant to section 1(4)(a) of that Act (exemption from registration in respect of certain homes) because one or more of the residents were treated as relatives pursuant to section 19(4) of that Act; and

(c) is living in that home on 4th October 1993; and

(d) between 1st April 1993 and 4th October 1993 he has not been absent from that home, or has been absent from it for a period not exceeding 13 weeks;

then subject to paragraph (1ZL) that person shall be treated for the purposes of this regulation as though he had a preserved right on and after 4th October 1993.

(1ZL) Paragraph (1ZK) shall cease to apply to a person who is treated as though he had a preserved right where he is absent from a residential care home or nursing home and that absence exceeds a period of—

(a) except in a case to which sub-paragraph (b) applies, 13 weeks; or

(b) 52 weeks where throughout the period of absence the person was a patient.]

[<sup>F211</sup>(1ZM) Where a person is treated in accordance with paragraph (1ZK) as having a preserved right, paragraph (1ZG) shall apply to that person as if he had acquired a preserved right under paragraph (1ZB).]

[<sup>F212</sup>(1ZN) Where a person—

(a) on 31st March 1993 was a member of a couple and his partner acquired a preserved right under paragraph (1ZB)(a)(i);

(b) before 3rd October 1994 ceased to be a member of a couple; and

(c) between 31st March 1993 and 3rd October 1994 has been living in a residential care home or a nursing home,



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he shall be treated for the purposes of this regulation as having a preserved right from 3rd October 1994.

(1ZO) Subject to paragraph (1ZG), where a person would have been living in a residential care home or nursing home on 31st March 1993 but for an absence which, including that day, does not exceed—

- (a) where the person was before his absence a temporary resident in the home, 4 weeks; or
- (b) where the person was before his absence a permanent resident in the home, 13 weeks; or
- (c) where throughout the period of absence the person was a patient, 52 weeks,

and the provisions of paragraph (1ZN) would have applied to him but for that absence, he shall be treated as having a preserved right from 3rd October 1994.

(1ZP) Where a person is treated as having a preserved right in accordance with paragraphs (1ZK), (1ZN) or (1ZO) above, paragraph (1ZG) shall apply to that person as if he had acquired a preserved right under paragraph (1ZB).

(1ZQ) Where a person to whom paragraph (1ZO) refers is absent from a residential care home or nursing home in the period from 31st March 1993 to 3rd October 1994 for a period which exceeds a period to which paragraph (1ZO) refers and which is appropriate in his case, he shall cease to be treated as having a preserved right.]

[<sup>F213</sup>(1ZR) A person who acquired a preserved right under paragraph (1ZB) or (1ZC) shall cease to have that right if —

- (a) he resides in a home which falls within sub-paragraph (c) of the definition of “residential care home” in paragraph (3) (homes run by the Abbeyfield Society) and which is not registered or deemed to be registered under any of the enactments referred to in sub-paragraph (a) or (e) of that definition;
- (b) he requires personal care, including assistance with bodily functions, and that residential care home does not provide such care; and
- (c) he, or a person on his behalf, contracts with another person or body to provide that care,

but that preserved right shall revive if any of the conditions specified in sub-paragraphs (a) to (c) above ceases to apply and that person would, but for this provision, have retained that right.]

[<sup>F199</sup>(1A) For the purposes of paragraph (1)(b) [<sup>F214</sup> and Schedule 4] a claimant and the members of his family are to be taken as living in a residential care home or nursing home even during periods when one or more members of the family are temporarily absent from the home but only if the claimant or his partner is living in the home during any such period.]

(2) Where—

- (a) a claimant immediately before 27th July 1987 was in receipt of supplementary benefit as a boarder in a residential care home which was not required to register under Part I of the Registered Homes Act 1984 because section 1(4) of that Act (registration) applied to it; and
- (b) immediately before 11th April 1988 his appropriate amount fell to be determined, by virtue of regulation 3 of the Supplementary Benefit (Requirements and Resources) Amendment Regulations 1987 <sup>F215</sup> (transitional provisions), in accordance with paragraph 1 of Schedule 1A to the Supplementary Benefit Requirements Regulations 1983 <sup>F216</sup> (maximum amounts for residential care homes) or would have been so determined but for his temporary absence from the home,

his weekly applicable amount shall be calculated in accordance with Part I of Schedule 4 (applicable amounts of persons in residential care homes or nursing homes) as if the home was a residential care home within the meaning of this regulation if, and for so long as, the claimant remains resident in the same home apart from any temporary absence, and the home continues to provide accommodation

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with board and personal care for the claimant by reason of his old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder.

(3) In this regulation and Schedule 4—

“nursing home” means—

- (a) premises which are a nursing home or mental nursing home within the meaning of the Registered Homes Act 1984 <sup>F217</sup> and which are either registered under Part II of that Act or exempt from registration under section 37 thereof (power to exempt Christian Science Homes); or
- (b) any premises used or intended to be used for the reception of such persons or the provision of such nursing or services as is mentioned in any paragraph of subsection (1) of section 21 or section 22 (1) of the Registered Homes Act 1984 (meaning of nursing home or mental nursing home) or, in Scotland, as are mentioned in section 10 (2) of the Nursing Homes Registration (Scotland) Act 1938 <sup>F218</sup> (interpretation) and which are maintained or controlled by a body instituted by special Act of Parliament or incorporated by Royal Charter;
- (c) in Scotland,
  - (i) premises which are a nursing home within the meaning of section 10 of the Nursing Homes Registration (Scotland) Act 1938 which are either registered under that Act or exempt from registration under section 6 or 7 thereof (general power to exempt homes and power to exempt Christian Science Homes); or
  - (ii) premises which are a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 <sup>F219</sup> (private hospitals), and which are registered under that Act;

“residential care home” means an establishment—

- (a) [<sup>F220</sup>which is required to be registered under Part I of the Registered Homes Act 1984 and is so registered]<sup>F221</sup>, or is deemed to be registered under section 2(3) of the Registered Homes (Amendment) Act 1991 (which refers to the registration of small homes where the application for registration has not been determined)]; or]
- (b) <sup>F222</sup> ...
- (c) run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society; or
- (d) [<sup>F223</sup>which provides residential accommodation with both board and personal care and is] managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament other than a local social services authority; or
- (e) in Scotland, which is a home registered under section 61 of the Social Work (Scotland) Act 1968 <sup>F224</sup> or is an establishment provided by [<sup>F225</sup>a housing association registered with Scottish Homes established by the Housing (Scotland) Act 1988]<sup>F226</sup> which provides care equivalent to that given in residential accommodation provided under Part IV of the Social Work (Scotland) Act [<sup>F227</sup>1968; or]
- (f) [<sup>F228</sup>which is exempt from registration under Part I of the Registered Homes Act 1984 pursuant to section 1(4)(a) of that Act (exemption from registration in respect of certain homes) because one or more of the residents are treated as relatives pursuant to section 19(4) of that Act;]

[<sup>F229</sup>and in paragraphs (b) and (d) of this definition “personal care” means personal care for persons in need of personal care by reason of [<sup>F230</sup>old] age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder.]

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“temporary absence” means—

- (a) [<sup>F231</sup>in paragraph (2) or] in the case of a person who is over pensionable age, 52 weeks;
- (b) in any other case, 13 weeks.

(4) In Schedule 4 the expressions “old age”, “mental disorder”, “mental handicap”, “drug or alcohol dependence” and “disablement” have the same meanings as those expressions have for the purposes of the Registered Homes Act 1984 and Regulations made thereunder.

[<sup>F232</sup>(5) Notwithstanding the foregoing paragraphs of this regulation, where—

- (a) a person has been registered under the Registered Homes Act 1984 in respect of premises which have been carried on as a residential care home or, as the case may be, a nursing home, and that person has ceased to carry on such a home; and
- (b) an application for registration under that Act has been made by another person and that application has not been determined or abandoned,

the applicable amount of a person resident in those premises shall be determined under Schedule 4 as if the most recent registration under the Registered Homes Act 1984 in respect of those premises continued until the day on which the application is determined or abandoned.]

#### Textual Amendments

- F199** Reg. 19(1)(1A) substituted for reg. 19(1) (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **9(a)**
- F200** Words in reg. 19(1) substituted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), regs. 1(1), **3(1)(a)**
- F201** Reg. 19(1ZA) inserted (20.5.1991) by [The Income Support \(General\) Amendment \(No. 3\) Regulations 1991 \(S.I. 1991/1033\)](#), regs. 1(1), **2**
- F202** Reg. 19(1ZB)-(1ZJ) inserted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), regs. 1(1), **3(1)(b)**
- F203** Reg. 19(1ZB)(a)(iii) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **24(2)**
- F204** Words in reg. 19(1ZC)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **9(2)**
- F205** Word in reg. 19(1ZD) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(b), **2(2)**
- F206** Words in reg. 19(1ZE) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **24(3)**
- F207** Reg. 19(1ZEA) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **24(4)**
- F208** Words in reg. 19(1ZG)(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **9(3)(a)(i)(ii)**
- F209** Words in reg. 19(1ZG)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **9(3)(b)**

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- F210** Reg. 19(1ZK)(1ZL) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119), regs. 1(1)(a), **9(4)**
- F211** Reg. 19(1ZM) inserted (with effect in accordance with reg. 1(3) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527), regs. 1(1)(b), **2(3)**
- F212** Reg. 19(1ZN)-(1ZQ) added (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(a), **24(5)**
- F213** Reg. 19(1ZR) inserted (8.4.1996) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/462), regs. 1(2), **2**
- F214** Words in reg. 19(1A) inserted (9.10.1989) by The Income Support (General) Amendment No. 3 Regulations 1989 (S.I. 1989/1678), regs. 1(1)(a), **5(a)**
- F215** S.I. 1987/1325.
- F216** S.I. 1983/1399; the relevant amending instruments are S.I. 1985/1835 and 1986/1292.
- F217** 1984 c. 23.
- F218** 1938 c. 73, **section 10** was amended by section 15 of the Mental Health (Scotland) Act 1960 (c. 61), and that amendment is preserved notwithstanding the repeal of that 1960 Act by section 126(1)(a) of the Mental Health (Scotland) Act 1984 (c. 36). Section 10 was also amended by Schedule 7 of the National Health Service (Scotland) Act 1972 (c. 58), **Schedules 7** and 8 of the Nurses, Midwives and Health Visitors Act 1979 (c. 36) and by Schedule 7 of the Health Services Act 1980 (c. 53) and subsection (2) of that section 10 was added by section 26 of, and paragraph 14 of Schedule 4 to the Health Services Act 1980 (c. 53).
- F219** 1984 c. 36.
- F220** Words in reg. 19(3) substituted (11.4.1988) by The Income Support (General) Amendment Regulations 1988 (S.I. 1988/663), regs. 1(1), **9(b)(i)**
- F221** Words in reg. 19(3) inserted (1.4.1993) by The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992 (S.I. 1992/3147), reg. 1(1), **Sch. 1 para. 2(a)**
- F222** Words in reg. 19(3) omitted (1.4.1993) by virtue of The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992 (S.I. 1992/3147), reg. 1(1), **Sch. 1 para. 2(b)**
- F223** Words in reg. 19(3)(d) inserted (12.9.1988) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), regs. 1(1)(b), **7(b)**
- F224** 1968 c. 49, **section 61** was amended by the Criminal Proceedings (Scotland Act) 1975 (c. 21), **section 289C** and G and Schedule 7C.
- F225** Words in reg. 19(3) substituted (1.4.1993) by The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992 (S.I. 1992/3147), reg. 1(1), **Sch. 1 para. 2(c)**
- F226** 1964 c. 56.
- F227** Words in reg. 19(3)(e) substituted for word (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119), regs. 1(1)(a), **9(5)(a)**
- F228** Reg. 19(3)(f) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119), regs. 1(1)(a), **9(5)(b)**
- F229** Words in reg. 19(3) inserted (12.9.1988) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), regs. 1(1)(b), **7(c)**
- F230** Word in reg. 19(3) inserted (12.12.1988) by The Income Support (General) Amendment No. 5 Regulations 1988 (S.I. 1988/2022), regs. 1(1)(a), **4**
- F231** Words in reg. 19(3) inserted (11.4.1988) by The Income Support (General) Amendment Regulations 1988 (S.I. 1988/663), regs. 1(1), **9(b)(ii)**

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**F232** Reg. 19(5) added (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **5(b)**

#### Commencement Information

**I19** Reg. 19 in force at 11.4.1988, see reg. 1

### Applicable amounts for persons in board and lodging accommodation and hostels

<sup>F233</sup>20. ....

#### Textual Amendments

**F233** Reg. 20 omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 4**

#### Commencement Information

**I20** Reg. 20 in force at 11.4.1988, see reg. 1

### Special cases

**21.**—(1) Subject to [<sup>F234</sup>regulations 21A and 22] (reductions in applicable amounts) in the case of a person to whom any paragraph in column (1) of Schedule 7 applies (applicable amounts in special cases), the amount included in the claimant's weekly amount in respect of him shall be the amount prescribed in the corresponding paragraph in column (2) of that Schedule; but no amount shall be included in respect of a child or young person if the capital of that child or young person calculated in accordance with Part V in like manner as for the claimant, [<sup>F235</sup>except as provided in regulation 44(1) (modifications in respect of children and young persons)], would exceed £3,000.

[<sup>F236</sup>(1A) Except where the amount prescribed in Schedule 7 in respect of a person to whom paragraph (1) applies includes an amount applicable under regulation 17(1)(d) or 18(1)(e), a person to whom paragraph (1) applies shall be treated as not being severely disabled.]

(2) In Schedule 7, for the purposes of paragraph 1, 2, 3 or 18 (patients), where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.

(3) In Schedule 7—

“person from abroad” means a person, who—

- (a) has a limited leave as defined in section 33(1) of the Immigration Act 1971 <sup>F237</sup> (hereinafter referred to as “the 1971 Act”) to enter or remain in the United Kingdom which was given in accordance with any provision of the immigration rules (as defined in that section) which refers to there being, or to there needing to be, no recourse to public funds or to there being no charge on public funds during that limited leave; but this subparagraph shall not apply to a person who is a national of a Member State, a state which is a signatory to the European Convention on Social and Medical Assistance (done in Paris on 11th December 1953) <sup>F238</sup>, [<sup>F239</sup>a state which is a signatory to the Council of Europe Social Charter (signed in Turin on 18th October 1961),] the Channel Islands or the Isle of Man [<sup>F240</sup>unless, in the case of a national of a state which is a signatory of that European Convention, he has made an application for the conditions of his leave to remain in the United Kingdom to be varied, and that application has not been determined or an appeal from that application is pending under Part II of the 1971 Act (appeals);] or

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- (b) having a limited leave (as defined in section 33(1) of the 1971 Act) to enter or remain in the United Kingdom, has remained without further leave under that Act beyond the time limited by the leave; or
- (c) is the subject of a deportation order being an order under section 5(1) of the 1971 Act (deportation) requiring him to leave and prohibiting him from entering the United Kingdom; or
- (d) is adjudged by the immigration authorities to be an illegal entrant (as defined in section 33(1) of the 1971 Act) who has not subsequently been given leave under that Act to enter or remain in the United Kingdom; or
- (e) has been allowed temporary admission to the United Kingdom by virtue of paragraph 21 of Schedule 2 to the 1971 Act; or
- (f) has been allowed temporary admission to the United Kingdom by the Secretary of State outside any provision of the 1971 Act; or
- (g) has not had his immigration status determined by the Secretary of State; <sup>F241</sup>or
- (h) is a national of a member State and is required by the Secretary of State to leave the United Kingdom] <sup>F242</sup>; or
- (i) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking given by another person or persons in writing in pursuance of immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation; and he has not been resident in the United Kingdom for a period of at least 5 years beginning from the date of entry or the date on which the undertaking was given in respect of him, whichever date is the later; or
- (j) while he is a person to whom any of the definitions in sub-paragraphs (a) to (i) applies in his case, submits a claim to the Secretary of State, which is not finally determined, for asylum under the Convention.]

<sup>F243</sup>“person from abroad” also means a claimant who is not habitually resident in the United Kingdom, the Republic of Ireland, the Channel Islands or the Isle of Man, but for this purpose, no claimant shall be treated as not habitually resident in the United Kingdom who is—

- (a) a worker for the purposes of Council Regulation (EEC) No. 1612/68 or (EEC) No. 1251/70 or a person with a right to reside in the United Kingdom pursuant to Council Directive No.68/360/EEC or No.73/148/EEC; or
- (b) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967; or
- (c) a person who has been granted exceptional leave to remain in the United Kingdom by the Secretary of State.]

“patient” means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975<sup>F244</sup>.

<sup>F245</sup>“prisoner” means a person who—

- (a) 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 1952 or the Prisons (Scotland) Act 1989,

other than a person whose detention is under the provisions of the Mental Health Act 1983 or the Mental Health (Scotland) Act 1984;]

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[<sup>F246</sup>“residential accommodation” means, subject to the following provisions of this regulation, accommodation provided by a local authority in a home owned or managed by that or another local authority—

- (a) under sections 21 to 24 <sup>F247</sup>...of the National Assistance Act 1948 (provision of accommodation); or
- (b) in Scotland, under section 13B or 59 of the Social Work (Scotland) Act 1968 (provision of residential and other establishments)<sup>F248</sup>...; or
- (c) under section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities), where the accommodation is provided for a person whose stay in that accommodation has become other than temporary.]

[<sup>F249</sup>(3A) Where on or after 12th August 1991 a person is in, or only temporarily absent from, residential accommodation within the meaning of paragraph (3) and that accommodation subsequently becomes a residential care home within the meaning of regulation 19 (applicable amounts for persons in residential care and nursing homes) that person shall continue to be treated as being in residential accommodation within the meaning of paragraph (3) if, and for so long as, he remains in the same accommodation and the local authority is under a duty to provide or make arrangements for providing accommodation for that person.]

[<sup>F250</sup>(3B) In a case where on 31st March 1993 a person was in or was temporarily absent from accommodation provided under section 26 of the National Assistance Act 1948, the definition of “residential accommodation” in paragraph (3) shall have effect in relation to that case as if for the words “provided by a local authority in a home owned or managed by that or another authority” there were substituted the words “provided in accordance with arrangements made by a local authority”, and for the words in sub-paragraph (a) “under sections 21 to 24<sup>F251</sup>...” there were substituted the words “under section 26”.

(3C) In a case where on 31st March 1993 a person was in or was temporarily absent from accommodation provided by a local authority under section 21 of the National Assistance Act 1948, the definition of “residential accommodation” in paragraph (3) shall have effect in relation to that case as if, after the words “by that or another [<sup>F252</sup>local] authority” there were inserted the words “or provided in accordance with arrangements made by a local authority”.]

[<sup>F253</sup>(3D) In Scotland, in a case where on the 31st March 1993 a person was in or was temporarily absent from accommodation provided under section 13B in a private or voluntary sector home, section 59(2)(c) of the Social Work (Scotland) Act 1968 or section 7 of the Mental Health (Scotland) Act 1984 in a voluntary or private sector home, the definition of “residential accommodation” in paragraph (3) shall have effect in that case as if—

- (a) for the words “provided by a local authority in a home owned or managed by that or another local authority” there were substituted the words “provided in accordance with arrangements made by a local authority”; and
- (b) for the words in sub-paragraph (b) “under section 13B or 59” there were substituted the words “under section 13B or 59(2)(c)”;

and for the purpose of this paragraph the definition of “residential accommodation” above shall continue to have effect as though the words “other than in premises registered under section 61 of that Act (registration) and which are used for the rehabilitation of alcoholics or drug addicts,” were retained at the end of sub-paragraph (b) of the definition.

(3E) In Scotland, in a case where on 31st March 1993 a person was in or was temporarily absent from accommodation the provision of which was secured by a local authority under section 13B in a home owned or managed by that or another local authority, section 59(2)(a) or (b) of the Social Work (Scotland) Act 1968, or section 7 of the Mental Health (Scotland) Act 1984 in a home owned or managed by that or another local authority, the definition of “residential accommodation” in

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paragraph (3) shall have effect in relation to that case as if, after the words “by that or another local authority” there were inserted the words “or provided in accordance with arrangements made by a local authority”.]

(4) A person who would, but for this paragraph, be in residential accommodation within the meaning of paragraph (3) shall not be treated as being in residential accommodation if he is a person—

- (a) who is under the age of 18 and in the care of a local authority under Part II or III of the Social Work (Scotland) Act 1968 (promotion of social welfare of children in need of care), or

<sup>F254</sup>(b) . . . . .

[<sup>F255</sup>(c) for whom board is not provided.]

[<sup>F256</sup>(4A) [<sup>F257</sup>In paragraph (4), sub-paragraph (c)] in the definition of “residential accommodation” shall apply only to accommodation—

- (a) where no cooked or prepared food is made available to the claimant in consequence solely of his paying the charge for the accommodation or any other charge which he is required to pay as a condition of occupying the accommodation, or both of those charges, or
- (b) where such food is actually made available for his consumption on payment of a further charge or charges.]

[<sup>F258</sup>(4B) In the case of a person who on 31st March 1993 was either in or only temporarily absent from, residential accommodation within the meaning of regulation 21(3) as then in force, paragraph (4) shall apply as if sub-paragraph (c) was omitted.]

(5) A claimant to whom paragraph 19 of Schedule 7 (disability premium) applies shall be entitled to income support for the period in respect of which that paragraph applies to him notwithstanding that his partner was also entitled to income support for that same period.

### Textual Amendments

- F234** Words in reg. 21(1) substituted (17.12.1990) by [The Income Support \(General and Transitional\) Amendment Regulations 1990 \(S.I. 1990/2324\)](#), regs. 1(1), **2**
- F235** Words in reg. 21(1) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(b), **3**
- F236** Reg. 21(1A) inserted (20.5.1991) by [The Income Support \(General\) Amendment \(No. 3\) Regulations 1991 \(S.I. 1991/1033\)](#), regs. 1(1), **3**
- F237** 1971 c. 77, as amended by the [British Nationality Act 1981 \(c. 61\)](#), **section 39** and Schedule 4.
- F238** Cmnd 9512.
- F239** Words in reg. 21(3) inserted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **7** (with reg. 1(2))
- F240** Words in reg. 21(3) inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **8**
- F241** Reg. 21(3)(h) and word added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), **4**
- F242** Reg. 21(3)(i)(j) and word added (5.2.1996) by [The Social Security \(Persons From Abroad\) Miscellaneous Amendments Regulations 1996 \(S.I. 1996/30\)](#), regs. 1(1), **8(2)** (with reg. 12)
- F243** Words in reg. 21(3) inserted (1.8.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1994 \(S.I. 1994/1807\)](#), regs. 1, **4(1)** (with reg. 4(2))
- F244** S.I. 1975/555, the relevant amending instruments are 1977/1693 and 1987/1683.



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- F245** Words in reg. 21(3) substituted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **21(a)(i)** (with reg. 1(2))
- F246** Words in reg. 21(3) substituted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), reg. 1(1), **Sch. 1 para. 3(a)**
- F247** Words in reg. 21(3) omitted (10.4.1995) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **21(a)(ii)** (with reg. 1(2))
- F248** Words in reg. 21(3) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **25(a)**
- F249** Reg. 21(3A) inserted (12.8.1991) by [The Income Support \(General\) Amendment \(No. 5\) Regulations 1991 \(S.I. 1991/1656\)](#), regs. 1(1), **2(b)**
- F250** Reg. 21(3B)(3C) inserted (1.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/518\)](#), regs. 1, **5(3)(a)**
- F251** Words in reg. 21(3B) omitted (10.4.1995) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **21(b)** (with reg. 1(2))
- F252** Word in reg. 21(3C) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **10**
- F253** Reg. 21(3D)(3E) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **25(b)**
- F254** Reg. 21(4)(b) and word omitted (10.4.1995) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **21(c)** (with reg. 1(2))
- F255** Words in Reg 21(4) substituted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1990/3147\)](#), reg. 1(1), **Sch. 1 para. 3(b)**
- F256** Reg. 21(4A) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **15(3)**
- F257** Words in reg. 21(4A) substituted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), reg. 1(1), **Sch. 1 para. 3(c)**
- F258** Reg. 21(4B) inserted (1.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/518\)](#), regs. 1, **5(3)(b)**

#### Modifications etc. (not altering text)

- C4** [Reg. 21\(1\)](#) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(2)**

#### Commencement Information

- I21** Reg. 21 in force at 11.4.1988, see reg. 1

### [<sup>F259</sup>Reductions in applicable amounts in certain cases of failure to attend courses

**21A.**—(1) The weekly applicable amount of a claimant to whom paragraph (3) applies shall be reduced in each relevant week by a sum equal to the appropriate percentage of the relevant amount which applies in his case.

(2) A reduction under paragraph (1) shall, if it is not a multiple of 5p, be rounded to the nearest such multiple or, if it is a multiple of 2.5p but not of 5p, to the next lower multiple of 5p.

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- (3) Except where paragraph (4) applies, this paragraph applies to a claimant where—
- (a) he has been notified of a relevant course;
  - (b) he has during the period of [<sup>F260</sup>12 months] which ended on the day on which he was notified of that course been in receipt of benefit—
    - (i) without any period of interruption;
    - (ii) with a period of interruption which did not exceed 56 days; or
    - (iii) with a number of periods of interruption, none of which exceeded 56 days;
  - (c) his entitlement to benefit during the whole of that period of [<sup>F261</sup>12 months], or such part of it as the claimant in question was in receipt of benefit, was subject to the condition that he was available for employment;
  - (d) his entitlement to income support is not subject to a reduction in the relevant week under regulation 22 (reductions in applicable amounts in certain cases of actual or notional unemployment benefit disqualification); and
  - (e) he has failed to attend the whole or any part of that course.
- (4) This paragraph shall apply where the claimant's failure to attend a relevant course is attributable to any of the following circumstances—
- (a) the claimant in question was suffering from some disease or bodily or mental disablement on account of which—
    - (i) he was not able to attend the relevant course in question; or
    - (ii) his attendance at that course would have put at risk the health of other persons;
  - (b) the time it took, or would normally have taken, for the claimant to travel from his home to the course and back to his home by a route and means appropriate to his circumstances and to the course exceeded, or would normally have exceeded, one hour in either direction;
  - (c) the claimant was caring for a member of his household where—
    - (i) that member was unable to care for himself;
    - (ii) no other member of that household was available to care for him; and
    - (iii) in the circumstances of the case it was not practical for the claimant to make other arrangements for the care of that member;
  - (d) the claimant was attending court <sup>F262</sup>... as a party to any proceedings, or as a witness or a juror;
  - (e) the claimant was arranging or attending the funeral of a partner or relative;
  - (f) the claimant was engaged in—
    - (i) the manning or launching of a lifeboat; or
    - (ii) the performance of duty as a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Acts 1947 to 1959;
  - (g) the claimant was required to deal with some domestic emergency; or
  - (h) the claimant was providing assistance in response to an emergency.
- (5) A claimant shall be treated as having provided assistance in response to an emergency for the purposes of paragraph (4)(h) [<sup>F263</sup>only]—
- <sup>F264</sup>(a) if he was a member of a group of persons organised wholly or partly for the purpose of providing such assistance and he was called upon to—

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- (i) provide assistance to any person whose life might have been endangered or who might have been exposed to the risk of serious bodily injury or whose health might have been seriously impaired;
  - (ii) protect property of substantial value from imminent risk of serious damage or destruction; or
  - (iii) assist in measures being taken to prevent a serious threat to health; and]
- (b) [<sup>F265</sup>where the events which gave rise to an emergency included]—
- (i) a fire, a flood or an explosion;
  - (ii) a natural catastrophe;
  - (iii) a railway or other accident;
  - (iv) a cave or mountain accident [<sup>F266</sup>or];
  - (v) a search for a person reported missing.
- (6) For the purposes of this regulation—
- “appropriate percentage” means 40 per cent. except that where the circumstances of a case fall within those set out in regulation 22(2) it means 20 per cent;
- “benefit” means income support or unemployment benefit or, if they are received in respect of the same benefit week, both of those benefits;
- “notified” means notified in writing by the Secretary of State for Employment by a notice which specifies in relation to the relevant course which the claimant may attend—
- (i) the date of the course, or if the duration of the course is to exceed one day, the date of each day of the course;
  - (ii) the time when the course is to begin, or if it is to begin at different times on different days, each of those times; and
  - (iii) the place at which the course is to be held, or, if it is to be held at more than one place, each of those places;
- “relevant amount” has the same meaning as in regulation 22(1);
- “relevant course” means a course or programme provided by [<sup>F267</sup>or on behalf of] the Secretary of State for Employment for the purpose of improving the prospects of unemployed persons entering or returning to employment other than any such course or programme which—
- (a) is provided for the purpose of training for employment or acquiring work experience; or
  - (b) exceeds 5 weeks in duration;
- “relevant week” means the benefit week which includes the Friday which falls more than 6 but less than 14 days after the Saturday of the week in which the claimant in question failed to attend the whole or any part of a relevant course.]

#### Textual Amendments

- F259** Reg. 21A inserted (17.12.1990) by [The Income Support \(General and Transitional\) Amendment Regulations 1990 \(S.I. 1990/2324\)](#), regs. 1(1), **3**
- F260** Words in reg. 21A(3)(b) substituted (29.3.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(a), **5(2)(a)**
- F261** Words in reg. 21A(3)(c) substituted (29.3.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(a), **5(2)(b)**
- F262** Words in reg. 21A(4)(d) omitted (29.3.1993) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(a), **5(3)**

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- F263** Word in reg. 21A(5) substituted (29.3.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(a), **5(4)(a)**
- F264** Reg. 21A(5)(a) substituted (29.3.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(a), **5(4)(b)**
- F265** Words in reg. 21A(5)(b) substituted (29.3.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(a), **5(4)(c)(i)**
- F266** Word in reg. 21A(5)(b) inserted (29.3.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(a), **5(4)(c)(ii)**
- F267** Words in reg. 21A(6) inserted (29.3.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(a), **5(5)**

### **Reductions in applicable amounts in certain cases of actual or notional unemployment benefit disqualification**

**22.**—(1) The weekly applicable amount of a claimant to whom paragraph (4) or (5) applies shall, subject to paragraph (2), be reduced by a sum equal to 40 per cent of the following amount (hereinafter referred to as the “relevant amount”)—

- (a) in the case of a person to whom regulation 17 or 18 or paragraph 4 to 6, 9 to 12, 16, 17(c) (i) or (d)(i) of Schedule 7 applies—
- (i) where he is a single claimant aged less than 18 or a member of a couple or a polygamous marriage where all the members, in either case, are less than 18, the amount specified in [<sup>F268</sup>paragraph 1(1)(a), (b) or (c), as the case may be.] of Schedule 2 (applicable amounts);
- (ii) where he is a single claimant aged not less than 18 but less than 25 [<sup>F269</sup>or a member of a couple or polygamous marriage where one member is aged not less than 18 but less than 25 and the other member, or in the case of a polygamous marriage each other member, is a person under 18 who is not eligible for income support under regulation 13A (persons under 18 years), or is not the subject of a direction under section 20(4A) (severe hardship direction)], the amount specified in [<sup>F270</sup>paragraph 1(1)(d)] of that Schedule;
- (iii) where he is a single claimant aged not less than 25 or a member of a couple or a polygamous marriage [<sup>F271</sup>(other than a member of a couple or polygamous marriage to whom head (ii) of this sub-paragraph applies)] at least one of whom is aged not less than 18, the amount specified in [<sup>F272</sup>paragraph 1(1)(e)] of that Schedule;
- (b) in the case of a person to whom [<sup>F273</sup>regulation 19 (applicable amounts for persons in residential care and nursing homes) applies, the amount allowed for personal expenses for him specified in paragraph 13 of Schedule 4.]

[<sup>F274</sup>(1A) The weekly applicable amount of a claimant to whom paragraph (5A) applies shall be reduced in accordance with paragraph (1) but for this purpose paragraph (1) shall be modified so that for the words “40 per cent” there are substituted the words “20 per cent”..]

(2) Where—

- (a) the claimant's capital calculated in accordance with Part V (including any capital treated as his) does not exceed £200; and
- (b) he or any member of his family is either pregnant or seriously ill,
- his weekly applicable amount shall be reduced by a sum equal to 20 per cent of the relevant amount in his case.

(3) A reduction under paragraph (1) or (2) shall, if it is not a multiple of 5p, be rounded to the nearest such multiple or, if it is a multiple of 2.5p but not of 5p, to the next lower multiple of 5p.

- (4) This paragraph applies to a claimant—
- (a) whose weekly applicable amount is calculated otherwise than in accordance with regulation 21 and paragraph 1 to 3, 8(b), 13, 16 and 18 of Schedule 7; and
  - (b) whose right to income support is, under section 20(3)(d)(i) of the Act (conditions of entitlement to income support), subject to the condition of availability for employment; and
  - (c) who—
    - (i) is disqualified for receiving unemployment benefit under section 20(1) of the Social Security Act <sup>F275</sup> (disqualifications etc); or
    - (ii) has made a claim for unemployment benefit which has not been determined by an adjudication officer and in respect of which, in the opinion of an adjudication officer, a question as to disqualification under that section arises; or
    - (iii) has not made a claim for unemployment benefit or has had such a claim disallowed other than by reason of section 20(1) and, in either case, would be so disqualified if he were to make such a claim or it had not been so disallowed.
- (5) This paragraph applies to a claimant who is not required to be available for employment by virtue of regulation <sup>F276</sup> ... [<sup>F277</sup>8(3)] (persons not required to be available for employment) [<sup>F278</sup> or a claimant who is not required to be actively seeking employment by virtue of regulation 10A(2) (actively seeking employment)]<sup>F276</sup> ....
- [<sup>F279</sup>(5A) This paragraph applies to a claimant who is not required to be available for employment by virtue of regulation 8(2A) (persons not required to be available for employment) or who is not required to register for employment by virtue of regulation 11(2A) (registration for employment)..]
- (6) This regulation shall apply—
- (a) in a case to which head (i) of paragraph (4)(c) applies, for the period of the disqualification;
  - (b) in a case to which head (ii) of paragraph (4)(c) applies, for a period of [<sup>F280</sup>13][<sup>F280</sup>26] weeks except that where, on subsequent determination of the claim for unemployment benefit—
    - (i) disqualification is not imposed, any reduction imposed under paragraph (1) or (2), as the case may be, shall be withdrawn,
    - (ii) disqualification is imposed but for a period of less than [<sup>F280</sup>13 ][<sup>F280</sup>26] weeks, the period of such reduction shall be adjusted to correspond with the period of disqualification;
  - (c) in a case to which head (iii) of paragraph (4)(c) applies, for the period for which the claimant would be disqualified if he were to make a claim for unemployment benefit or if such a claim had not been disallowed for other reasons.
  - (d) in a case to which [<sup>F281</sup>paragraph (5) or (5A)] applies, for so long as that paragraph continues so to apply.

#### Textual Amendments

**F268** Words in reg. 22(1)(a)(i) substituted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **6(a)**

**F269** Words in reg. 22(1)(a)(ii) inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **9(a)**

**F270** Words in reg. 22(1)(a)(ii) substituted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **6(b)**

**F271** Words in reg. 22(1)(a)(iii) inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **9(b)**

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- F272** Words in reg. 22(1)(a)(iii) substituted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **6(c)**
- F273** Words in reg. 22(1)(b) substituted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 6**
- F274** Reg. 22(1A) inserted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **9(2)** (with reg. 1(4))
- F275** 1975 c. 14; subsection (1) was amended and subsection (1A) was added by the [Social Security Act 1986 \(c. 5\)](#), section 43.
- F276** Words in reg. 22(5) omitted (8.4.1991) by virtue of [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **8** (with reg. 1(2))
- F277** Words in reg. 22(5) inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **11(a)**
- F278** Words in reg. 22(5) inserted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **7**
- F279** Reg. 22(5A) inserted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **9(3)** (with reg. 1(4))
- F280** Word in reg. 22 substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **11(b)**
- F281** Words in reg. 22(6)(d) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **9(4)** (with reg. 1(4))

#### Modifications etc. (not altering text)

- C5** Reg. 22(1) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**
- C6** Reg. 22(2) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**
- C7** Reg. 22(2)(a) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**

#### Commencement Information

- I22** Reg. 22 in force at 11.4.1988, see reg. 1

## PART V

### INCOME AND CAPITAL

#### CHAPTER I

##### general

#### Calculation of income and capital of members of claimant's family and of a polygamous marriage

**23.—**(1) [<sup>F282</sup>Subject to paragraphs (2) and (4) and to regulation 44 (modifications in respect of children and young persons), the income and capital of a claimant's partner and] the income of a child or young person which by virtue of section 22(5) of the Act is to be treated as income and capital of the claimant, shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the "claimant" shall, except where the context otherwise requires, be construed, for the purposes of this Part, as if it were a reference to his partner or that child or young person.

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(2) Regulations 36(2) and 38(2), so far as they relate to paragraphs 1 to 10 of Schedule 8 (earnings to be disregarded) and regulation 41(1) (capital treated as income) shall not apply to a child or young person.

(3) [<sup>F283</sup>Subject to paragraph (5)] where a claimant or the partner of a claimant is married polygamously to two or more members of his household—

- (a) the claimant shall be treated as possessing capital and income belonging to each such member and the income of any child or young person who is one of that member's family; and
- (b) the income and capital of that member or, as the case may be, the income of that child or young person shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant or, as the case may be, as for any child or young person who is a member of his family.

[<sup>F284</sup>(4) Where at least one member of a couple is aged less than 18 and the applicable amount of the couple falls to be determined under paragraph 1(3)(b), (e) or (f) of Schedule 2 (applicable amounts), the income of the claimant's partner shall not be treated as the income of the claimant to the extent that—

- (a) in the case of a couple where both members are aged less than 18, the amount specified in paragraph 1(3)(a) of that Schedule exceeds the amount specified in paragraph 1(3)(b) of that Schedule; and
- (b) in the case of a couple where only one member is aged less than 18, the amount specified in paragraph 1(3)(d) of that Schedule exceeds the amount which applies in that case which is specified in paragraph 1(3)(e) or (f) of that Schedule.]

[<sup>F284</sup>(5) Where a member of a polygamous marriage is a partner aged less than 18 and the amount which applies in respect of him under regulation 18(2) (polygamous marriages) is nil, the claimant shall not be treated as possessing the income of that partner to the extent that an amount in respect of him would have been included in the applicable amount if he had fallen within the circumstances set out in regulation 18(2)(a) or (b).]

#### Textual Amendments

**F282** Words in reg. 23(1) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), **6(1)(a)**

**F283** Words in reg. 23(3) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), **6(1)(b)**

**F284** Reg. 23(4)(5) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), **6(1)(c)**

#### Commencement Information

**I23** Reg. 23 in force at 11.4.1988, see reg. 1

### Treatment of charitable or voluntary payments

<sup>F285</sup>**24.** . . . . .

#### Textual Amendments

**F285** Reg. 24 omitted (12.12.1988) by virtue of [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **5**

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#### Commencement Information

**I24** Reg. 24 in force at 11.4.1988, see reg. 1

#### Liable relative payments

**25.** Regulations 29 to 44, 46 to 52 and Chapter VIII of this Part shall not apply to any payment which is to be calculated in accordance with Chapter VII thereof (liable relatives).

#### Commencement Information

**I25** Reg. 25 in force at 11.4.1988, see reg. 1

#### [<sup>F286</sup>Child support

**25A.** Regulations 29, 31, 32, 40 and 42 and Chapter VII of this Part shall not apply to any payment which is to be calculated in accordance with Chapter VIIA of this Part (child support).]

#### Textual Amendments

**F286** Reg. 25A inserted (19.4.1993) by [The Social Security \(Miscellaneous Provisions\) Amendment Regulations 1993 \(S.I. 1993/846\)](#), regs. 1(1), 2 (with reg. 1(2))

#### Calculation of income and capital of students

**26.** The provisions of Chapters II to VI of this Part (income and capital) shall have effect in relation to students and their partners subject to the modifications set out in Chapter VIII thereof (students).

#### Commencement Information

**I26** Reg. 26 in force at 11.4.1988, see reg. 1

#### [<sup>F287</sup>Rounding of fractions

**27.** Where any calculation under this Part results in a fraction of a penny that fraction shall, if it would be to the claimant's advantage, be treated as a penny, otherwise it shall be disregarded.]

#### Textual Amendments

**F287** Reg. 27 substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), 13

#### Commencement Information

**I27** Reg. 27 in force at 11.4.1988, see reg. 1



## CHAPTER II

### income

#### Calculation of income

**28.**—(1) For the purposes of section 20(3) of the Act (conditions of entitlement to income support) the income of a claimant shall be calculated on a weekly basis—

- (a) by determining in accordance with this Part, other than Chapter VI, the weekly amount of his income; and
- (b) by adding to that amount the weekly income calculated under regulation 53 (calculation of tariff income from capital).

[<sup>F288</sup>(2) For the purposes of paragraph (1) “income” includes capital treated as income under regulation 41 (capital treated as income) and income which a claimant is treated as possessing under regulation 42 (notional income).]

#### Textual Amendments

**F288** Reg. 28(2) substituted (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), 7 (with reg. 1(2))

#### Commencement Information

**I28** Reg. 28 in force at 11.4.1988, see reg. 1

#### Calculation of earnings derived from employed earner's employment and income other than earnings

**29.**—(1) <sup>F289</sup>... Earnings derived from employment as an employed earner and income which does not consist of earnings shall be taken into account over a period determined in accordance with the following paragraphs and at a weekly amount determined in accordance with regulation 32 (calculation of weekly amount of income).

(2) Subject to [<sup>F290</sup>paragraphs (3) [<sup>F291</sup>and (4A) to (4D)]]], the period over which a payment is to be taken into account shall be—

- (a) in a case where it is payable in respect of a period, a period equal to the length of that period;
- (b) in any other case, a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the net earnings, or in the case of income which does not consist of earnings, the amount of that income [<sup>F292</sup>less any amount paid by way of tax on that income which is disregarded under paragraph 1 of Schedule 9 (income other than earnings to be disregarded)] by the amount of income support which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from that payment under Schedule 8 [<sup>F293</sup>(earnings to be disregarded) or, as the case maybe, any paragraph of Schedule 9 other than paragraph 1 of that Schedule,] as is appropriate in the claimant's case,

and that period shall begin on the date on which the payment is treated as paid under regulation 31 (date on which income is treated as paid).

(3) Where earnings not of the same kind are derived from the same source and the periods in respect of which those earnings would, but for this paragraph, fall to be taken into account—

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- (a) overlap, wholly or partly, those earnings shall be taken into account over a period equal to the aggregate length of those periods;
- (b) and that period shall begin with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 31 (date on which income is treated as paid).

[<sup>F294</sup>(4) In a case to which paragraph (3) applies, earnings under regulation 35 (earnings of employed earners) shall be taken into account in the following order of priority—

- (a) earnings normally derived from the employment;
- (b) any payment to which paragraph (1)(b) or (c) of that regulation applies;
- (c) any payment to which paragraph (1)(i) of that regulation applies;
- (d) any payment to which paragraph (1)(d) of that regulation applies.]

[<sup>F295</sup>(4A) Where earnings to which regulation 35(1)(b) to (d) (earnings of employed earners) applies are paid in respect of part of a day, those earnings shall be taken into account over a period equal to a day.]

[<sup>F296</sup>(4B) Where earnings to which regulation 35(1)(i)(i) applies (earnings of employed earners) are paid in respect of or on the termination of any employment which is not part-time employment, the period over which they are to be taken into account shall be—

- (a) a period equal to such number of weeks as is equal to the number (less any fraction of a whole number) obtained by dividing the net earnings by the maximum weekly amount which, on the date on which the payment of earnings is made, is specified in paragraph 8(1)(c) of Schedule 14 to the Employment Protection (Consolidation) Act 1978; or
- (b) a period equal to the length of the specified period, whichever is the shorter, and that period shall begin on the date on which the payment is treated as paid under regulation 31 (date on which income is treated as paid).]

[<sup>F296</sup>(4C) Any earnings to which regulation 35(1)(i)(ii) applies which are paid in respect of or on the termination of part-time employment, shall be taken into account over a period equal to one week.]

[<sup>F296</sup>(4D) In this regulation—

- (a) “part-time employment” means employment in which a person is not to be treated as engaged in remunerative work under regulation 5 or 6 (persons treated, or not treated, as engaged in remunerative work);
- (b) “specified period” means a period equal to—
  - (i) the period of notice which is applicable to a person, or would have been applicable if it had not been waived; less
  - (ii) any part of that period during which the person has continued to work in the employment in question or in respect of which he has received a payment to which regulation 35(1)(c) applies, and for the purposes of this definition “period of notice” means the period of notice of termination of employment to which a person is entitled by statute or by contract, whichever is the longer, or, if he is not entitled to such notice, the period of notice which is customary in the employment in question.]

(5) For the purposes of this regulation the claimant's earnings and income which does not consist of earnings shall be calculated in accordance with Chapters III and V respectively of this Part.

#### Textual Amendments

**F289** Words in reg. 29(1) omitted (12.12.1988) by virtue of [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **7(a)**

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- F290** Words in reg. 29(2) substituted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **7(b)**
- F291** Words in reg. 29(2) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **9(a)**
- F292** Words in reg. 29(2)(b) inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **10(a)**
- F293** Words in reg. 29(2)(b) substituted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **10(b)**
- F294** Reg. 29(4) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **9(b)**
- F295** Reg. 29(4A) inserted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **7(c)**
- F296** Reg. 29(4B)-(4D) inserted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **9(c)**

#### Commencement Information

- I29** Reg. 29 in force at 11.4.1988, see reg. 1

### Calculation of earnings of self-employed earners

**30.**—(1) Except where paragraph (2) applies, where a claimant's income consists of earnings from employment as a self-employed earner the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

- (a) over a period of [<sup>F297</sup>one year]; or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period <sup>F298</sup> ... as may, in any particular case, enable the weekly amount of his earnings to be determined more accurately.

(2) Where the claimant's earnings consist of royalties or sums paid periodically for or in respect of any copyright those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the earnings by the amount of income support which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 8 (earnings to be disregarded) as is appropriate in the claimant's case.

(3) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Chapter IV of this Part.

#### Textual Amendments

- F297** Words in [reg. 30\(1\)\(a\)](#) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **11(a)**
- F298** Words in [reg. 30\(1\)\(b\)](#) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **11(b)**

#### Commencement Information

- I30** Reg. 30 in force at 11.4.1988, see reg. 1

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### Date on which income is treated as paid

**31.**—(1) Except where paragraph (2) applies, a payment of income to which regulation 29 (calculation of earnings derived from employed earner's employment and income other than earnings) applies shall be treated as paid—

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

(2) Income support, unemployment benefit, [<sup>F299</sup>maternity allowance,]<sup>F300</sup> short-term or long-term incapacity benefit], or severe disablement allowance <sup>F301</sup>... shall be treated as paid on the day of the benefit week in respect of which [<sup>F302</sup>it is payable].

#### Textual Amendments

**F299** Words in reg. 31(2) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **8**

**F300** Words in reg. 31(2) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **10** (with reg. 1(4))

**F301** Words in reg. 31(2) omitted (13.4.1995) by virtue of [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **10** (with reg. 1(4))

**F302** Words in reg. 31(2) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **14**

#### Commencement Information

**I31** Reg. 31 in force at 11.4.1988, see [reg. 1](#)

### Calculation of weekly amount of income

**32.**—(1) For the purposes of regulation 29 (calculation of earnings derived from employed earner's employment and income other than earnings), subject to [<sup>F303</sup>paragraphs (2) to (7)]<sup>F304</sup>..., where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall be determined—
  - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
  - (ii) in a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
  - (iii) in a case where that period is a year by dividing the amount of the payment by 52;
  - (iv) in any other case by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) Where a payment for a period not exceeding a week is treated under regulation 31(1)(a) (date on which income is treated as paid) as paid before the first benefit week and a part is to be taken into account for some days only in that week (the relevant days), the amount to be taken into account for the relevant days shall be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

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(3) Where a payment is in respect of a period equal to or in excess of a week and a part thereof is to be taken into account for some days only in a benefit week (the relevant days), the amount to be taken into account for the relevant days shall, except where paragraph (4) applies, be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(4) In the case of a payment of—

- (a) unemployment benefit, [<sup>F305</sup>maternity allowance,][<sup>F306</sup>short-term or long-term incapacity benefit], or severe disablement allowance<sup>F306</sup> ..., the amount to be taken into account for the relevant days shall be the amount of benefit [<sup>F307</sup>payable] in respect of those days;
- (b) income support, the amount to be taken into account for the relevant days shall be calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by seven.

(5) Except in the case of a payment which it has not been practicable to treat under regulation 31(1)(b) as paid on the first day of the benefit week in which it is due to be paid, where a payment of income from a particular source is or has been paid regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of that income to be taken into account in any one benefit week shall not exceed the weekly amount determined under paragraph (1)(a) or (b), as the case may be, of the payment which under regulation 31(1)(b) (date on which income is treated as paid) is treated as paid first.

(6) Where the amount of the claimant's income fluctuates and has changed more than once, or a claimant's regular pattern of work is such that he does not work every week, the foregoing paragraphs may be modified so that the weekly amount of his income is determined by reference to his average weekly income—

- (a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (b) in any other case, over a period of five weeks or such other period as may, in the particular case, enable the claimant's average weekly income to be determined more accurately.

[<sup>F308</sup>(7) Where any payment of earnings is taken into account under paragraph (4C) of regulation 29 (calculation of earnings derived from employed earner's employment and income other than earnings), over the period specified in that paragraph, the amount to be taken into account shall be equal to the amount of the payment.]

#### Textual Amendments

- F303** Words in reg. 32(1) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **10(a)**
- F304** Words in reg. 32(1) omitted (11.4.1988) by virtue of [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **15(a)**
- F305** Words in reg. 32(4)(a) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **8**
- F306** Words in reg. 32(4)(a) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **11** (with reg. 1(4))
- F307** Word in reg. 32(4)(a) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **15(b)**
- F308** Reg. 32(7) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **10(b)**

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**Commencement Information**

**I32** Reg. 32 in force at 11.4.1988, see reg. 1

**Weekly amount of charitable or voluntary payment**

<sup>F309</sup>**33.** . . . . .

**Textual Amendments**

**F309** Reg. 33 omitted (12.12.1988) by virtue of [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **8**

**Commencement Information**

**I33** Reg. 33 in force at 11.4.1988, see reg. 1

**Incomplete weeks of benefit**

<sup>F310</sup>**34.** . . . . .

**Textual Amendments**

**F310** Reg. 34 omitted (11.4.1988) by virtue of [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **16**

**Commencement Information**

**I34** Reg. 34 in force at 11.4.1988, see reg. 1

**CHAPTER III**

**employed earners**

**Earnings of employed earners**

**35.**—(1) [<sup>F311</sup>Subject to paragraphs (2) and (3),] “earnings” means in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice <sup>F312</sup> . . . . .;
- (d) any holiday pay except any payable more than four weeks after the termination or interruption of employment but this exception shall not apply to a claimant to whom [<sup>F313</sup>section 23 of the Act (trade disputes) applies or in respect of whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by section 23A(b) of the Act (effect of return to work).]
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—

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- (i) travelling expenses incurred by the claimant between his home and place of employment;
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;
  - (g) any award of compensation made under section 68(2) or 71(2)(a) of the Employment Protection (Consolidation) Act 1978 <sup>F314</sup> (remedies for unfair dismissal and compensation);
  - (h) any such sum as is referred to in section 18(2) of the Social Security (Miscellaneous Provisions) Act 1977 <sup>F315</sup> (certain sums to be earnings for social security purposes).
- [<sup>F316</sup>(i) where—
- (i) a payment of compensation is made in respect of employment which is not part-time employment and that payment is not less than the maximum weekly amount, the amount of the compensation less the deductible remainder, where that is applicable;
  - (ii) a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation.]
- [<sup>F317</sup>(1A) For the purposes of paragraph (1)(i)(i) the “deductible remainder”—
- (a) applies in cases where dividing the amount of the compensation by the maximum weekly amount produces a whole number plus a fraction; and
  - (b) is equal to the difference between—
    - (i) the amount of the compensation; and
    - (ii) the product of the maximum weekly amount multiplied by the whole number.]
- (2) “Earnings” shall not include—
- (a) any payment in kind;
  - (b) any remuneration paid by or on behalf of an employer to the claimant [<sup>F318</sup>in respect of a period throughout which the claimant is on maternity leave or is absent from work because he is ill];
  - (c) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - (d) any occupational pension.
- [<sup>F319</sup>(3) In this regulation—
- (a) “compensation” means any payment made in respect of or on the termination of employment in a case where a person has not received or received only part of a payment in lieu of notice due or which would have been due to him had he not waived his right to receive it, other than—
    - (i) any payment specified in paragraph (1)(a) to (h);
    - (ii) any payment specified in paragraph (2)(a) to (d);
    - (iii) any redundancy payment within the meaning of section 81(1) of the Employment Protection (Consolidation) Act 1978, and
    - (iv) any refund of contributions to which that person was entitled under an occupational pension scheme within the meaning of section 66(1) of the Social Security Pensions Act 1975;
- [ any compensation payable by virtue of section 173 or section 178(3) or (4) of the <sup>F320</sup>(v) Education Reform Act 1988 ]

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- (b) “maximum weekly amount” means the maximum weekly amount which, on the date on which the payment of compensation is made, is specified in paragraph 8(1)(c) of Schedule 14 to the Employment Protection (Consolidation) Act 1978;
- (c) “part-time employment” means employment in which a person is not to be treated as engaged in remunerative work under regulation 5 or 6 (persons treated, or not treated, as engaged in remunerative work).]

#### Textual Amendments

- F311** Words in reg. 35(1) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **11(a)(i)**
- F312** Words in reg. 35(1)(c) omitted (9.10.1989) by virtue of [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **11(a)(ii)**
- F313** Words in reg. 35(1)(d) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **17**
- F314** 1978 c. 44; section 68(2) was amended by the [Employment Act 1982 \(c. 46\)](#) section 21 Schedule 3 paragraph 21; section 71(2) was amended by the [Employment Act 1982 \(c. 46\)](#) sections 5 and 21 Schedule 3 paragraph 22 and Schedule 4.
- F315** 1977 c. 5; section 18(2) was amended by section 159 Schedule 16 paragraph 29 of the [Employment Protection \(Consolidation\) Act 1978 \(c. 44\)](#) and by section 86(2) of, and Schedule 10 Part IV paragraph 75 and Schedule 11 to, the [Social Security Act 1986 \(c. 50\)](#).
- F316** Reg. 35(1)(i) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **11(a)(iii)**
- F317** Reg. 35(1A) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **11(a)(iii)**
- F318** Words in reg. 35(2)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **12**
- F319** Reg. 35(3) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **11(b)**
- F320** Words in reg. 35(3)(a) inserted (1.4.1990) by [The Education \(Inner London Education Authority\) \(Transitional and Supplementary Provisions\) \(No. 2\) Order 1990 \(S.I. 1990/774\)](#), arts. 1, **2**

#### Commencement Information

- I35** Reg. 35 in force at 11.4.1988, see reg. 1

#### Calculation of net earnings of employed earners

**36.—(1)** For the purposes of regulation 29 (calculation of earnings of employed earners) the earnings of a claimant derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

(2) There shall be disregarded from a claimant's net earnings, any sum, where applicable, specified in paragraphs 1 to 13 of Schedule 8.

(3) For the purposes of paragraph (1) net earnings shall be calculated by taking into account the gross earnings of the claimant from that employment less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax;
  - (ii) primary Class 1 contributions under the Social Security Act<sup>F321</sup>; and



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- (b) one-half of any sum paid by the claimant [<sup>F322</sup>in respect of a pay period] by way of a contribution towards an occupational or personal pension scheme.

#### Textual Amendments

- F321** See sections 1(2) and 4 of the [Social Security Act 1975 \(c. 14\)](#); section 1 was amended by the [Employment Protection Act 1975 \(c. 71\)](#), [section 40](#), the [Social Security \(Miscellaneous Provisions\) Act 1977 \(c. 5\)](#), [section 24](#) and Schedule 2, the [Social Security \(Contributions\) Act 1982 \(c. 2\)](#) section 2, the [Social Security Act 1985 \(c. 53\)](#) section 29 and Schedule 5, paragraph 5, the [Social Security Act 1986 \(c. 50\)](#), [section 86](#) and Schedule 11 and S.I. 1987/48; section 4 was amended by the [Social Security Pensions Act 1975 \(c. 60\)](#), [Schedule 4](#), paragraph 36, the [Education \(School-Leaving Dates\) Act 1976 \(c. 5\)](#), [section 2\(4\)](#), the [Social Security Act 1979 \(c. 18\)](#), [section 14\(1\)](#), the [Social Security and Housing Benefits Act 1982 \(c. 24\)](#), [Schedule 5](#), the [Social Security Act 1985 \(c. 53\)](#) sections 7(1) and (2) and 8(1) the [Social Security Act 1986 \(c. 50\)](#) sections 74(1)(a) and (2) and 86 and Schedule 10, paragraph 104, article 2 of S.I. 1986/25 and article 2 of S.I. 1987/46.
- F322** Words in reg. 36(3)(b) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), [26](#)

#### Commencement Information

- I36** Reg. 36 in force at 11.4.1988, see reg. 1

## CHAPTER IV

### self-employed earners

#### Earnings of self-employed earners

**37.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance paid under section 2 of the [Employment and Training Act 1973](#) <sup>F323</sup> [<sup>F324</sup> or section 2 of the [Enterprise and New Towns \(Scotland\) Act 1990](#)] to the claimant for the purpose of assisting him in carrying on his business.

[<sup>F325</sup>(2) “Earnings” shall not include—

- (a) where a claimant is involved in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge;]

[<sup>F326</sup>(b) any payment to which paragraph 26 or 27 of Schedule 9 refers (payments in respect of a person accommodated with the claimant under an arrangement made by a local authority or voluntary organisation and payments made to the claimant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the claimant’s care).]

#### Textual Amendments

- F323** [1973 c. 50](#); section 2 was amended by sections 9 and 11 and Schedule 2 Part II paragraph 9 and Schedule 3 of the [Employment and Training Act 1981 \(c. 57\)](#).
- F324** Words in reg. 37(1) inserted (1.4.1991) by The [Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, 2, [Sch.](#)
- F325** Reg. 37(2) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The [Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), [16](#)

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**F326** Reg. 37(2)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(a), **27**

#### Commencement Information

**I37** Reg. 37 in force at 11.4.1988, see reg. 1

### Calculation of net profit of self-employed earners

**38.**—(1) For the purposes of regulation 30 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975<sup>F327</sup>, his share of the net profit derived from that employment less—
  - (i) an amount in respect of income tax and of social security contributions payable under the Social Security Act calculated in accordance with regulation 39 (deduction of tax and contributions for self-employed earners); and
  - (ii) [<sup>F328</sup>one half of any premium paid [<sup>F329</sup>in the period that is relevant under regulation 30] in respect of a retirement annuity contract or a personal pension scheme].

(2) There shall be disregarded from a claimant's net profit any sum, where applicable, specified in paragraphs 1 to 13 of Schedule 8.

(3) For the purposes of paragraph (1) (a) the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment over the period determined under regulation 30 (calculation of earnings of self-employed earners) less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax; and
  - (ii) social security contributions payable under the Social Security Act, calculated in accordance with regulation 39 (deduction of tax and contributions for self-employed earners); and
- (c) [<sup>F328</sup>one half of any premium paid [<sup>F330</sup>in the period that is relevant under regulation 30] in respect of a retirement annuity contract or a personal pension scheme].

(4) For the purposes of paragraph (1) (b), the net profit of the employment shall be calculated by taking into account the earnings of the employment over the period determined under regulation 30 less, subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purposes of that employment.

(5) Subject to paragraph (6), no deduction shall be made under paragraph (3) (a) or (4) in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;

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- (d) any loss incurred before the beginning of the period determined under regulation 30 (calculation of earnings of self-employed earners);
  - (e) the repayment of capital on any loan taken out for the purposes of the employment;
  - (f) any expenses incurred in providing business entertainment.
- (6) A deduction shall be made under paragraph (3) (a) or (4) in respect of the repayment of capital on any loan used for—
- (a) the replacement in the course of business of equipment or machinery; and
  - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (7) An adjudication officer shall refuse to make a deduction in respect of any expenses under paragraph (3) (a) or (4) where he is not satisfied that the expense has been defrayed or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.
- (8) For the avoidance of doubt—
- (a) a deduction shall not be made under paragraph (3) (a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
  - (b) a deduction shall be made thereunder in respect of—
    - (i) the excess of any VAT paid over VAT received in the period determined under regulation 30 (calculation of earnings of self-employed earners);
    - (ii) any income expended in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair;
    - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (9) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be one-third of the earnings of that employment, less—
- (a) an amount in respect of—
    - (i) income tax; and
    - (ii) social security contributions payable under the Social Security Act, calculated in accordance with regulation 39 (deduction of tax and contributions for self-employed earners); and
  - (b) [<sup>F328</sup>one half of any premium paid in respect of a retirement annuity contract or a personal pension scheme].
- (10) Notwithstanding regulation 30 (calculation of earnings of self-employed earners) and the foregoing paragraphs, an adjudication officer may assess any item of a claimant's income or expenditure over a period other than that determined under regulation 30 as may, in the particular case, enable the weekly amount of that item of income or expenditure to be determined more accurately.
- (11) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

<sup>F331</sup>(12) .....

**Textual Amendments**  
**F327** [S.I. 1975/529](#).

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- F328** Words in reg. 38 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **13(2)**
- F329** Words in reg. 38(1)(b)(ii) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **28**
- F330** Words in reg. 38(3)(c) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **28**
- F331** Reg. 38(12) omitted (with effect in accordance with reg. 1(4) of the amending S.I.) by virtue of [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(3)** (with reg. 8)

#### Commencement Information

- I38** Reg. 38 in force at 11.4.1988, see reg. 1

### Deduction of tax and contributions for self-employed earners

**39.**—(1) The amount to be deducted in respect of income tax under regulation 38 (1) (b) (i), (3) (b) (i) or (9) (a) (i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at [<sup>F332</sup>the lower rate or, as the case may be, the lower rate and the basic rate of tax] less only the personal relief to which the claimant is entitled under sections 8 (1) and (2) and 14 (1) (a) and (2) of the Income and Corporation Taxes Act 1970 (personal relief) <sup>F333</sup> as is appropriate to his circumstances; but, if the period determined under regulation 30 (calculation of earnings of self-employed earners) is less than a year, [<sup>F334</sup>the earnings to which the lower rate <sup>F335</sup>... of tax is to be applied and] the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 38(1) (b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of—

[<sup>F336</sup>(a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Contributions and Benefits Act at the rate applicable at the date of claim except where the claimant’s chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and]

[<sup>F336</sup>(b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but if the assessment period is less than a year, those limits shall be reduced pro rata.]

(3) In this regulation “chargeable income” means—

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3) (a) or, as the case may be, (4) of regulation 38;
- (b) in the case of employment as a child minder, one-third of the earnings of that employment.

### Textual Amendments

- F332** Words in reg. 39(1) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **17(a)**
- F333** 1970 c. 10; section 8 (1) was amended by the [Finance Act 1971 \(c. 68\)](#) section 37 Schedule 6 paragraphs 1 and 5, and the [Finance Act 1985 \(c. 54\)](#) section 36, subsection (1A) was added by the [Finance \(No.2\) Act 1975 \(c. 45\)](#) section 31 and amended by the [Finance Act 1977 \(c. 36\)](#) section 22. Subsection (1B) was added by the Finance (No.2) Act 1975 section 31. Section 8 (2) was amended by the Finance Act 1971 section 37 Schedule 6 paragraphs 1 and 5 and article 2 of [S.I. 1985/430](#); sub-paragraph (b) was substituted by the [Finance \(No.2\) Act 1979 \(c. 47\)](#) section 12 Schedule 2 paragraph 1; sub-paragraph (b) (i) and (ii) were amended by the [Finance Act 1981 \(c. 35\)](#) section 139 Schedule 19 [Part VI and the Finance Act 1982 \(c. 39\)](#) section 157 Schedule 22 Part IV; sub-paragraph (b) (iii) was added by the [Finance Act 1981 \(c. 35\)](#) section 27 and sub-paragraph (b) (iv) by the [Finance Act 1987 \(c. 16\)](#) section 27. Section 14 (1) was amended by the [Finance Act 1970 \(c. 24\)](#) section 14 Schedule 8 Part VI; section 14 (2) was amended by the [Finance Act 1976 \(c. 40\)](#) section 36, the [Finance \(No.2\) Act 1979 \(c. 47\)](#) section 11 Schedule 1 paragraph 2 and the [Finance Act 1980 \(c. 48\)](#) section 24.
- F334** Words in reg. 39(1) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **17(b)**
- F335** Words in reg. 39(1) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **29**
- F336** Reg. 39(2)(a)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **14**

### Commencement Information

- I39** Reg. 39 in force at 11.4.1988, see reg. 1

## CHAPTER V

### other income

#### Calculation of income other than earnings

**40.**—(1) For the purposes of regulation 29 (calculation of income other than earnings) the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs <sup>F337</sup>(2) to (3A)], be his gross income and any capital treated as income under regulations <sup>F338</sup>... 41 and 44 (<sup>F338</sup>... capital treated as income and modifications in respect of children and young persons).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1), any sum, where applicable, specified in Schedule 9.

(3) Where the payment of any benefit under the benefit Acts <sup>F339</sup> is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

<sup>F340</sup>(3A) Where a loan is made to a person pursuant to arrangements made under section 1 of the Education (Student Loans) Act 1990 [<sup>F341</sup>or article 3 of the Education (Student Loans) (Northern Ireland) Order 1990] and that person ceases to be a student before the end of the academic year in respect of which the loan is payable or, as the case may be, before the end of his course, a sum equal to the weekly amount apportionable under paragraph (2) of regulation 66A shall be taken into

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account under paragraph (1) for each week, in the period over which the loan fell to be apportioned, following the date on which that person ceases to be a student; but in determining the weekly amount apportionable under paragraph (2) of regulation 66A so much of that paragraph as provides for a disregard shall not have effect.]

(4) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 35(2) or 37(2) (payments not earnings) applies.

#### Textual Amendments

- F337** Words in reg. 40(1) substituted (1.9.1990) by [The Social Security Benefits \(Student Loans and Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/1549\)](#), regs. 1(1)(a), **5(4)(a)** (with reg. 7(1))
- F338** Words in reg. 40(1) omitted (12.12.1988) by virtue of [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **9**
- F339** The benefit Acts are specified in section 84(1) of the [Social Security Act 1986 \(c. 50\)](#).
- F340** Reg. 40(3A) inserted (1.9.1990) by [The Social Security Benefits \(Student Loans and Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/1549\)](#), regs. 1(1)(a), **5(4)(b)** (with reg. 7(1))
- F341** Words in reg. 40(3A) inserted (13.3.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(a), **9** (with reg. 1(2))

#### Commencement Information

- I40** Reg. 40 in force at 11.4.1988, see reg. 1

### Capital treated as income

**41.**—(1) Any capital payable by instalments which are outstanding on the first day in respect of which income support is payable or the date of the determination of the claim, whichever is earlier, or, in the case of a review, the date of any subsequent review shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI of this Part exceeds [<sup>F342</sup>£8,000], be treated as income.

(2) Any payment received under an annuity shall be treated as income.

(3) In the case of a person to whom section 23 of the Act (trade disputes) applies [<sup>F343</sup> or in respect of whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by section 23A(b) of the Act (effect of return to work)], any payment under [<sup>F344</sup> [<sup>F345</sup> section 17 or 24 of the Children Act 1989] or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) shall be treated as income].

[<sup>F346</sup>(4) In the case of a person to whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by section 23A(b) of that Act (effect of return to work), any amount by way of repayment of income tax deducted from his emoluments in pursuance of section 203 of the Income and Corporation Taxes Act 1988, shall be treated as income.]

[<sup>F347</sup>(5) Any earnings to the extent that they are not a payment of income shall be treated as income.]

#### Textual Amendments

- F342** Sum in Reg. 41(1) substituted (9.4.1990) by [The Income-Related Benefits \(Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/671\)](#), regs. 1(1)(c), **5(2)**
- F343** Words in reg. 41(3) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **18**

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- F344** Words in reg. 41(3) substituted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **7**
- F345** Words in reg. 41(3) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), **Sch. para. 4**
- F346** Reg. 41(4) added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **9**
- F347** Reg. 41(5) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **13**

#### Commencement Information

- I41** Reg. 41 in force at 11.4.1988, see [reg. 1](#)

#### Notional income

**42.**—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to income support or increasing the amount of that benefit.

(2) Except in the case of—

- (a) a discretionary trust;
  - (b) a trust derived from a payment made in consequence of a personal injury;
  - (c) unemployment benefit under the Social Security Act which may be payable to a claimant who is not required to be available for employment; or
  - (d) an increase of child benefit payable to a claimant under regulation 2(2) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 <sup>F348</sup> (rates of child benefit),
- <sup>F349</sup>(e) family credit;]
- <sup>F349</sup>(f) disability working allowance,]
- <sup>F350</sup>(g) a personal pension scheme or retirement annuity contract where the claimant is aged under 60,]

income which would become available to the claimant upon application being made but which has not been acquired by him shall be treated as possessed by him but only from the date on which <sup>F351</sup>it could be expected to be acquired were an application made].

<sup>F352</sup>(2A) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—
  - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
  - (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
  - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

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

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(2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the adjudication officer who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987.

(2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or subparagraph (2A)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (2B).]

(3) Except in the case of a discretionary trust, or a trust derived from a payment made in consequence of a personal injury, any income which is due to be paid to the claimant but—

- (a) has not been paid to him;
- (b) is not a payment prescribed in regulation 9 or 10 of the Social Security (Payments on Account, Overpayment and Recovery) Regulations 1987<sup>F353</sup> (duplication and prescribed payments or maintenance payments) and not made on or before the date prescribed in relation to it,

shall [<sup>F354</sup>except for any amount to which paragraph (3A) or (B) applies] be treated as possessed by the claimant.

[<sup>F355</sup>(3A) This paragraph applies to an amount which is due to be paid to the claimant under an occupational pension scheme but which is not paid because the trustees or managers of the scheme have suspended or ceased payments<sup>F356</sup> ... due to an insufficiency of resources.]

[<sup>F355</sup>(3B) This paragraph applies to any amount by which a payment made to the claimant from an occupational pension scheme falls short of the payment to which he was due under the scheme where the shortfall arises because the trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities<sup>F357</sup> ....]

[<sup>F358</sup>(4) Any payment of income, other than a payment of income made under the Macfarlane Trust]<sup>F359</sup>, the Macfarlane (Special Payments) Trust]<sup>F360</sup>, the Macfarlane (Special Payments) (No. 2) Trust]<sup>F361</sup>, the Fund]<sup>F362</sup>, the Eileen Trust]] or [<sup>F363</sup>the Independent Living Funds], made—

- (a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall be treated—

- (i) in a case where that payment is derived from a payment of any benefit under the benefit Acts, a war disablement pension]<sup>F364</sup>, war widow's pension or a pension payable to a person as a widow under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865 [<sup>F365</sup>or the Pensions and Yeomanry Pay Act 1884], or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977 and any power of Her Majesty otherwise than under an enactment 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 the armed forces of the Crown,] as possessed by that single claimant, if it is paid to him, or by that member, if it is paid to any member of that family;

- (ii) in any other case, as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable, [<sup>F366</sup>or]<sup>F367</sup> ... any housing costs to the extent that they are met under regulations 17(1)(e) or 18(1)(f) (housing costs)<sup>F368</sup> ...<sup>F369</sup> ...<sup>F370</sup> ...), of that single claimant or, as the case may be, of any member of



that family<sup>[F371]</sup>, or is used for any <sup>[F372]</sup>council tax] or water charges for which that claimant or member is liable;]

- (b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family;

but, except where sub-paragraph (a)(i) applies and in the case of a person to whom section 23 of the Act (trade disputes) applies, this paragraph shall not apply to any payment in kind.]

<sup>[F373]</sup>(4A) Where the claimant lives in a residential care home or a nursing home, or is temporarily absent from such a home, any payment made by a person other than the claimant or a member of his family in respect of some or all of the cost of maintaining the claimant or a member of his family in that home shall be treated as possessed by the claimant or by that member of his family.]

(5) Where a claimant's earnings are not ascertainable at the time of the determination of the claim or of any subsequent review the adjudication officer shall treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(6) Where—

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

the adjudication officer shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies him that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a claimant who is engaged by a charitable or <sup>[F374]</sup>voluntary organisation] or is a volunteer if the adjudication officer is satisfied <sup>[F375]</sup>in any of those cases] that it is reasonable for him to provide his services free of charge.

(7) Where a claimant is treated as possessing any income under any of paragraphs (1) to (4) the foregoing provisions of this Part shall apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(8) Where a claimant is treated as possessing any earnings under paragraph (5) or (6) the foregoing provisions of this Part shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (3) of regulation 36 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account the earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings <sup>[F376]</sup>the lower rate or, as the case may be, the lower rate and the basic rate of tax] in the year of assessment less only the personal relief to which the claimant is entitled under sections 8(1) and (2) and 14(1)(a) and (2) of the Income and Corporation Taxes Act 1970 (personal relief) as is appropriate to his circumstances; but, if the period over which those earnings are to be taken into account is less than a year, <sup>[F377]</sup>the earnings to which the lower rate <sup>F378</sup>... of tax is to be applied and] the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis;

- <sup>[F379]</sup>(b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the Contributions and Benefits Act, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1) (a) and (b) of that Act; and]

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- (c) one-half of any sum payable by the claimant [<sup>F380</sup>in respect of a pay period] by way of a contribution towards an occupational or personal pension scheme.

[<sup>F381</sup>(8A) In paragraphs (3A) and (3B) the expression “resources” has the same meaning as in the Social Security Pensions Act 1975 by virtue of section 66(1) of that Act.]

[<sup>F382</sup>(9) In paragraph (4) the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.]

### Textual Amendments

- F348** S.I. 1976/1267; relevant amending instruments are S.I. 1980/110, 1986/1172 and 1987/45.
- F349** Reg. 42(2)(e)(f) inserted (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992](#) (S.I. 1992/468), regs. 1(1), **4** (with reg. 1(2))
- F350** Reg. 42(2)(g) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995](#) (S.I. 1995/2303), regs. 1(1)(a), **6(4)(a)** (with reg. 8)
- F351** Words in reg. 42(2) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988](#) (S.I. 1988/663), regs. 1(1), **19(a)**
- F352** Reg. 42(2A)-(2C) inserted (with effect in accordance with reg. 1(5) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995](#) (S.I. 1995/2303), regs. 1(1)(a), **6(4)(b)** (with reg. 8)
- F353** S.I. 1987/491.
- F354** Words in reg. 42(3) inserted (22.5.1992) by [The Income Support \(General\) Amendment \(No.2\) Regulations 1992](#) (S.I. 1992/1198), regs. 1, **2(a)**
- F355** Reg. 42(3A)(3B) inserted (22.5.1992) by [The Income Support \(General\) Amendment \(No.2\) Regulations 1992](#) (S.I. 1992/1198), regs. 1, **2(b)**
- F356** Words in reg. 42(3A) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993](#) (S.I. 1993/315), regs. 1(1)(c), **6(a)**
- F357** Words in reg. 42(3B) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993](#) (S.I. 1993/315), regs. 1(1)(c), **6(b)**
- F358** Reg. 42(4) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988](#) (S.I. 1988/1445), regs. 1(1)(b), **10(a)**
- F359** Words in reg. 42(4) inserted (31.1.1990) by [The Income-related Benefits Schemes Amendment Regulations 1990](#) (S.I. 1990/127), regs. 1(1), **3(3)(a)**
- F360** Words in reg. 42(4) inserted (11.5.1991) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1991](#) (S.I. 1991/1175), regs. 1(1), **5(3)**
- F361** Words in reg. 42(4) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992](#) (S.I. 1992/1101), regs. 1(1), **6(3)**
- F362** Words in reg. 42(4) inserted (14.5.1993) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1993](#) (S.I. 1993/1249), regs. 1(1)(a), **4(3)(a)**
- F363** Words in reg. 42(4) substituted (22.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993](#) (S.I. 1993/963), regs. 1, **2(3)(4)**
- F364** Words in reg. 42(4) substituted (28.10.1995) by [The Income-related Benefits Schemes Amendment \(No. 2\) Regulations 1995](#) (S.I. 1995/2792), regs. 1, **6(2)**
- F365** Words in reg. 42(4) inserted (20.12.1995) by [The Income-related Benefits Schemes \(Widows' etc. Pensions Disregards\) Amendment Regulations 1995](#) (S.I. 1995/3282), regs. 1, **2(1)(d)**
- F366** Word in reg. 42(4)(a)(ii) inserted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994](#) (S.I. 1994/527), regs. 1(1)(b), **4(2)(a)**

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- F367** Words in reg. 42(4)(a)(ii) omitted (7.10.1991) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **8(a)** (with reg. 1(2))
- F368** Words in reg. 42(4)(a)(ii) omitted (with effect in accordance with reg. 1(3) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(b), **4(2)(b)**
- F369** Words in reg. 42(4)(a)(ii) omitted (10.4.1989) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 4** (with reg. 28)
- F370** Words in reg. 42(4)(a)(ii) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 7**
- F371** Words in reg. 42(4)(a)(ii) added (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **8(b)** (with reg. 1(2))
- F372** Words in reg. 42(4)(a)(ii) substituted (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), reg. 1(1)(b), **Sch. para. 2**
- F373** Reg. 42(4A) inserted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(b), **4(3)**
- F374** Words in reg. 42(6) substituted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **22(a)** (with reg. 1(2))
- F375** Words in reg. 42(6) inserted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **22(b)** (with reg. 1(2))
- F376** Words in reg. 42(8)(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **18(a)**
- F377** Words in reg. 42(8)(a) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **18(b)**
- F378** Words in reg. 42(8)(a) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **29**
- F379** Reg. 42(8)(b) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(b), **4(4)**
- F380** Words in reg. 42(8)(c) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **26**
- F381** Reg. 42(8A) inserted (22.5.1992) by [The Income Support \(General\) Amendment \(No.2\) Regulations 1992 \(S.I. 1992/1198\)](#), regs. 1, **2(c)**
- F382** Reg. 42(9) added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **10(b)**

**Modifications etc. (not altering text)**

- C8** Reg. 42(4) applied with modifications (1.4.1993) by [The National Assistance \(Assessment of Resources\) Regulations 1992 \(S.I. 1992/2977\)](#), regs. 1, **17(3)**

**Commencement Information**

- I42** Reg. 42 in force at 11.4.1988, see reg. 1

**Notional earnings of seasonal workers**

<sup>F383</sup>**43.** . . . . .

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### Textual Amendments

**F383** Reg. 43 revoked (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **14**

### Commencement Information

**I43** Reg. 43 in force at 11.4.1988, see reg. 1

## Modifications in respect of children and young persons

**44.**—(1) Any capital of a child or young person payable by instalments which are outstanding on the first day in respect of which income support is payable or at the date of the determination of the claim, whichever is earlier, or, in the case of a review, the date of any subsequent review shall, if the aggregate of the instalments outstanding and the amount of that child's or young person's other capital calculated in accordance with Chapter VI of this Part in like manner as for the claimant<sup>F384</sup> ... would exceed £3,000, be treated as income.

(2) In the case of a child or young person who is residing at an educational establishment at which he is receiving relevant education—

- (a) any payment made to the educational establishment, in respect of that child's or young person's maintenance, by or on behalf of a person who is not a member of the family or by a member of the family out of funds contributed for that purpose by a person who is not a member of the family, shall be treated as income of that child or young person but it shall only be taken into account over periods during which that child or young person is present at that educational establishment; and
- (b) if a payment has been so made, for any period in a benefit week in term-time during which that child or young person returns home, he shall be treated as possessing an amount of income in that week calculated by multiplying the amount of personal allowance and disabled child premium, if any, applicable in respect of that child or young person by the number equal to the number of days in that week in which he was present at his educational establishment and dividing the product by seven; but this sub-paragraph shall not apply where the educational establishment is provided under section 8 of the Education Act 1944<sup>F385</sup> (duty of local authority to secure primary and secondary schools) by a local education authority or where the payment is made under section 49 or 50 of the Education (Scotland) Act 1980<sup>F386</sup> (power of education authority to assist persons).

(3) Where a child or young person—

- (a) is resident at an educational establishment and he is wholly or partly maintained at that establishment by a local education authority under section 8 of the Education Act 1944; or
- (b) is maintained at an educational establishment under section 49 or 50 of the Education (Scotland) Act 1980,

he shall for each day he is present at that establishment be treated as possessing an amount of income equal to the sum obtained by dividing the amount of personal allowance and disabled child premium, if any, applicable in respect of him by seven.

(4) Where the income of a child or young person who is a member of the claimant's family calculated in accordance with [<sup>F387</sup>Chapters I to V] of this Part exceeds the amount of the personal allowance and disabled child premium, if any, applicable in respect of that child or young person, the excess shall not be treated as income of the claimant.

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(5) Where the capital of a child or young person if calculated in accordance with Chapter VI of this Part in like manner as for the claimant, [<sup>F388</sup>except as provided in paragraph (1)], would exceed £3,000, any income of that child or young person shall not be treated as income of the claimant.

(6) In calculating the net earnings or net profit of a child or young person there shall be disregarded, (in addition to any sum which falls to be disregarded under paragraphs 11 to 13), any sum specified in paragraphs 14 and 15 of Schedule 8 (earnings to be disregarded).

(7) Any income of a child or young person which is to be disregarded under Schedule 9 (income other than earnings to be disregarded) shall be disregarded in such manner as to produce the result most favourable to the claimant.

(8) Where a child or young person is treated as possessing any income under paragraphs (2) and (3) the foregoing provisions of this Part shall apply for the purposes of calculating that income as if a payment had actually been made and as if it were actual income which he does possess.

[<sup>F389</sup>(9) For the purposes of this regulation, a child or young person shall not be treated as present at his educational establishment on any day if on that day he spends the night with the claimant or a member of his household.]

#### Textual Amendments

**F384** Words in [reg. 44\(1\)](#) omitted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), [regs. 1\(1\)\(a\)](#), **15(2)**

**F385** [1944 c. 31](#) section 8 was amended by the [Education \(Miscellaneous Provisions\) Act 1948 \(c. 40\)](#) section 3, the [Education Act 1980 \(c. 20\)](#) section 38 and Schedule 7 and by the [Education Act 1981 \(c. 60\)](#) section 2.

**F386** [1980 c. 44](#) section 50 was amended by the [Education \(Scotland\) Act 1981 \(c. 58\)](#) section 2.

**F387** Words in [reg. 44\(4\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), [regs. 1\(1\)\(a\)](#), **15(3)**

**F388** Words in [reg. 44\(5\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), [regs. 1\(1\)\(a\)](#), **15(4)**

**F389** [Reg. 44\(9\)](#) added ([11.4.1988](#)) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), [regs. 1\(1\)](#), **20**

#### Commencement Information

**I44** [Reg. 44](#) in force at [11.4.1988](#), see [reg. 1](#)

## CHAPTER VI

### capital

#### Capital limit

[<sup>F390</sup>**45.** For the purposes of section 134(1) of the Contributions and Benefits Act as it applies to income support (no entitlement to benefit if capital exceeds prescribed amount)—

- (a) except where paragraph (b) applies, the prescribed amount is £8,000;
- (b) where the circumstances prescribed in regulation 53(1B) apply in the claimant's case, the prescribed amount is £16,000.]

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#### Textual Amendments

**F390** Reg. 45 substituted (8.4.1996) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/462\)](#), regs. 1(2), **12(1)(a)**

#### Commencement Information

**I45** Reg. 45 in force at 11.4.1988, see reg. 1

### Calculation of capital

**46.**—(1) For the purposes of Part II of the Act as it applies to income support, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under [<sup>F391</sup>regulation 48 (income treated as capital).]

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 10.

#### Textual Amendments

**F391** Words in reg. 46(1) substituted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **10**

#### Commencement Information

**I46** Reg. 46 in force at 11.4.1988, see reg. 1

### Disregard of capital of child or young person

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

#### Commencement Information

**I47** Reg. 47 in force at 11.4.1988, see reg. 1

### Income treated as capital

**48.**—(1) Any <sup>F392</sup>... bounty derived from employment to which paragraph 7 of Schedule 8 applies [<sup>F393</sup>and paid at intervals of at least one year] shall be treated as capital.

(2) Except in the case of an amount to which section 23(5) (a) (ii) of the Act (refund of tax in trade disputes cases) [<sup>F394</sup>or regulation 41(4) (capital treated as income)] applies, any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 35(1) (d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 4, 6, [<sup>F395</sup>12 or 25 to 28] of Schedule 10, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

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(5) Subject to paragraph (6), in the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer shall be treated as capital.

[<sup>F396</sup>(6) Paragraph (5) shall not apply to a person to whom section 23 of the Act (trade disputes) applies or in respect of whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by section 23A(b) (effect of return to work).]

(7) Any payment under section 30 of the Prison Act 1952 <sup>F397</sup> (payments for discharged prisoners) or allowance under section 17 of the Prisons (Scotland) Act 1952 <sup>F398</sup> (allowances to prisoners on discharge) shall be treated as capital.

[<sup>F399</sup>(8) Any payment made by a local authority which represents arrears of payments under paragraph 15 of Schedule 1 to the Children Act 1989 (power of a local authority to make contributions to a person with whom a child lives as a result of a residence order) shall be treated as capital.]

[<sup>F400</sup>(9) Any charitable or voluntary payment which is not made or not due to be made at regular intervals, other than one to which paragraph (10) applies, shall be treated as capital.]

[<sup>F400</sup>(10) This paragraph applies to a payment—

- (a) which is made to a person to whom section 23 of the Act (trade disputes) applies or in respect of whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by section 23A(b) of the Act (effect of return to work) or to a member of the family of such a person;
- (b) to which regulation 44(2) (modification in respect of children and young persons) applies; or
- (c) which is made under the Macfarlane Trust<sup>F401</sup>, the Macfarlane (Special Payments) Trust<sup>F402</sup>, the Macfarlane (Special Payments) (No. 2) Trust<sup>F403</sup>, the Fund<sup>F404</sup>, the Eileen Trust<sup>F405</sup> or [the Independent Living Funds].]

[<sup>F406</sup>(11) Any compensation within the meaning of regulation 35(3) (earnings of employed earners) which is made in respect of employment which is not part-time employment within the meaning of that regulation, to the extent that it is not earnings by virtue of regulation 35(1)(i)(i) shall be treated as capital.]

#### Textual Amendments

**F392** Word in reg. 48(1) omitted (12.9.1988) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **11(a)**

**F393** Words in reg. 48(1) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **11(a)**

**F394** Words in reg. 48(2) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **11(b)**

**F395** Words in reg. 48(4) substituted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **11(a)**

**F396** Reg. 48(6) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **21**

**F397** 1952 c. 52; section 30 was substituted by section 66 (3) of the [Criminal Justice Act 1967 \(c. 80\)](#).

**F398** 1952 c. 61.

**F399** Reg. 48(8) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), **Sch. para. 5** (with Sch. para. 11)

**F400** Reg. 48(9)(10) added (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **11(b)**

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- F401** Words in reg. 48(10)(c) inserted (31.1.1990) by [The Income-related Benefits Schemes Amendment Regulations 1990 \(S.I. 1990/127\)](#), regs. 1(1), **3(3)(b)**
- F402** Words in reg. 48(10)(c) inserted (11.5.1991) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1991 \(S.I. 1991/1175\)](#), regs. 1(1), **5(4)**
- F403** Words in reg. 48(10)(c) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(4)**
- F404** Words in reg. 48(10)(c) inserted (14.5.1993) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1993 \(S.I. 1993/1249\)](#), regs. 1(1)(a), **4(3)(b)**
- F405** Words in reg. 48(10)(c) substituted (22.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/963\)](#), regs. 1, **2(3)(4)**
- F406** Reg. 48(11) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **15**

#### Commencement Information

- I48** Reg. 48 in force at 11.4.1988, see [reg. 1](#)

### Calculation of capital in the United Kingdom

- 49.** Capital which a claimant possesses in the United Kingdom shall be calculated—
- (a) except in a case to which sub-paragraph (b) applies, at its current market or surrender value, less—
    - (i) where there would be expenses attributable to sale, 10 per cent; and
    - (ii) the amount of any incumbrance secured on it;
  - (b) in the case of a National Savings Certificate—
    - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the first day on which income support is payable or the date of the determination of the claim, whichever is the earlier, or in the case of a review, the date of any subsequent review, at the price which it would have realised on that 1st July had it been purchased on the last day of that issue;
    - (ii) in any other case, at its purchase price.

#### Commencement Information

- I49** Reg. 49 in force at 11.4.1988, see [reg. 1](#)

### Calculation of capital outside the United Kingdom

- 50.** Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—
- (a) in a case in which there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
  - (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

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



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### Commencement Information

**I50** Reg. 50 in force at 11.4.1988, see reg. 1

### Notional capital

**51.**—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to income support or increasing the amount of that benefit [<sup>F407</sup>except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant; or
- (b) to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 51A (diminishing notional capital rule).]

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtainable only if secured against capital disregarded under Schedule 10, [<sup>F408</sup>or
- (d) a personal pension scheme or retirement annuity contract,]

any capital which would become available to the claimant upon application being made but which has not been acquired by him shall be treated as possessed by him but only from the date on which [<sup>F409</sup>it could be expected to be acquired were an application made]

[<sup>F410</sup>(3) Any payment of capital, other than a payment of capital made under the Macfarlane Trust[<sup>F411</sup>, the Macfarlane (Special Payments) Trust][<sup>F412</sup>, the Macfarlane (Special Payments) (No. 2) Trust][<sup>F413</sup>, the Fund[<sup>F414</sup>, the Eileen Trust ]] or [<sup>F415</sup>the Independent Living Funds], made—

- (a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall be treated—
  - (i) in a case where that payment is derived from a payment of any benefit under the benefit Acts, a war disablement pension or a war widow's pension as possessed by that single claimant, if it is paid to him, or by that member if it is paid to any member of the family;
  - (ii) in any other case, as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable, [<sup>F416</sup>... any housing costs to the extent that they are met under regulation 17(1)(e) and 18(1)(f) (housing costs) or accommodation charge to the extent that it is met under regulation 19 [<sup>F417</sup>... (persons in residential care or nursing homes [<sup>F418</sup> ... [<sup>F417</sup> ...]), of that single claimant or, as the case may be, of any member of that family][<sup>F419</sup>, or is used for any [<sup>F420</sup>council tax] or water charges for which that claimant or member is liable];
- (b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.]

(4) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he shall be treated as if he were such sole owner or partner and in such a case—

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- (a) the value of his holding in that company shall, notwithstanding regulation 46 (calculation of capital), be disregarded; and
- (b) he shall, subject to paragraph (5), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.
- (5) For so long as the claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (4) shall be disregarded.
- (6) Where a claimant is treated as possessing capital under any of paragraphs (1) to (4), the foregoing provisions of this Chapter shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.
- [<sup>F421</sup>(7) For the avoidance of doubt a claimant is to be treated as possessing capital under paragraph (1) only if the capital of which he has deprived himself is actual capital.]
- [<sup>F422</sup>(8) In paragraph (3) the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.]

#### Textual Amendments

- F407** Words in reg. 51(1) substituted (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **5(a)** (with reg. 1(2))
- F408** [Reg. 51\(2\)\(d\) added \(with effect in accordance with reg. 1\(4\) of the amending S.I.\) by The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(5)** (with reg. 8)
- F409** Words in reg. 51(2) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **22(a)**
- F410** [Reg. 51\(3\) substituted \(12.9.1988\) by The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **12(a)**
- F411** Words in reg. 51(3) inserted (31.1.1990) by [The Income-related Benefits Schemes Amendment Regulations 1990 \(S.I. 1990/127\)](#), regs. 1(1), **3(3)(c)**
- F412** Words in reg. 51(3) inserted (11.5.1991) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1991 \(S.I. 1991/1175\)](#), regs. 1(1), **5(5)**
- F413** Words in reg. 51(3) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(5)**
- F414** Words in reg. 51(3) inserted (14.5.1993) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1993 \(S.I. 1993/1249\)](#), regs. 1(1)(a), **4(3)(c)**
- F415** Words in reg. 51(3) substituted (22.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/963\)](#), regs. 1, **2(3)(4)**
- F416** Words in reg. 51(3)(a)(ii) omitted (7.10.1991) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **9(a)** (with reg. 1(2))
- F417** Words in reg. 51(3)(a)(ii) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 7**
- F418** Words in reg. 51(3)(a)(ii) omitted (10.4.1989) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 4** (with reg. 28)
- F419** Words in reg. 51(3)(a)(ii) added (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **9(b)** (with reg. 1(2))
- F420** Words in reg. 51(3)(a)(ii) substituted (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), reg. 1(1)(b), **Sch. para. 3**
- F421** [Reg. 51\(7\) added \(11.4.1988\) by The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **22(c)**

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**F422** Reg. 51(8) added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **12(b)**

**Modifications etc. (not altering text)**

**C9** Reg. 51(2) applied with modifications (1.4.1993) by [The National Assistance \(Assessment of Resources\) Regulations 1992 \(S.I. 1992/2977\)](#), regs. 1, **25(3)(a)**

**C10** Reg. 51(3)(a)(ii) applied with modifications (1.4.1993) by [The National Assistance \(Assessment of Resources\) Regulations 1992 \(S.I. 1992/2977\)](#), regs. 1, **25(3)(b)**

**Commencement Information**

**I51** Reg. 51 in force at 11.4.1988, see reg. 1

**[<sup>F423</sup>Diminishing notional capital rule**

**51A.**—(1) Where a claimant is treated as possessing capital under regulation 51(1) (notional capital), the amount which he is treated as possessing—

(a) in the case of a week that is subsequent to—

(i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied, or

(ii) a week which follows that relevant week and which satisfies those conditions,

shall be reduced by an amount determined under paragraph (2);

(b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—

(i) that week is a week subsequent to the relevant week, and

(ii) that relevant week is a week in which the condition in paragraph (3) is satisfied,

shall be reduced by the amount determined under paragraph (3).

(2) This paragraph applies to a benefit week or part week where the claimant satisfies the conditions that—

(a) he is in receipt of income support; and

(b) but for regulation 51(1), he would have received an additional amount of income support in that benefit week or, as the case may be, that part week;

and in such a case, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to that additional amount.

(3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to income support in the relevant week, but for regulation 51(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

(a) the amount of income support to which the claimant would have been entitled in the relevant week but for regulation 51(1); and for the purposes of this sub-paragraph if the relevant week is a part-week that amount shall be determined by dividing the amount of income support to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;

(b) the amount of housing benefit (if any) equal to the difference between his maximum housing benefit and the amount (if any) of housing benefit which he is awarded in respect of the benefit week, within the meaning of regulation 2(1) of the Housing Benefit (General) Regulations 1987 (interpretation), which includes the last day of the relevant week;

(c) the amount of community charge benefit (if any) equal to the difference between his maximum community charge benefit and the amount (if any) of community charge benefit which he is awarded in respect of the benefit week, within the meaning of regulation 2(1)

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of the Community Charge Benefits (General) Regulations 1989 (interpretation) which includes the last day of the relevant week.

[ the amount of council tax benefit (if any) equal to the difference between his maximum  
F424(d) council tax benefit and the amount (if any) of council tax benefit which he is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose “benefit week” has the same meaning as in regulation 2(1) of the Council Tax Benefit (General) Regulations 1992 (interpretation).]

(4) The amount determined under paragraph (3) shall be re-determined under that paragraph if the claimant makes a further claim for income support and the conditions in paragraph (5) are satisfied, and in such a case—

- (a) sub-paragraphs (a), (b) and (c) of paragraph (3) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to paragraph (6), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.

(5) The conditions are that—

- (a) a further claim is made 26 or more weeks after—
  - (i) the date on which the claimant made a claim for income support in respect of which he was first treated as possessing the capital in question under regulation 51(1); or
  - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which he last made a claim for income support which resulted in the weekly amount being re-determined; or
  - (iii) the date on which he last ceased to be in receipt of income support; whichever last occurred; and
- (b) the claimant would have been entitled to income support but for regulation 51(1).

(6) The amount as re-determined pursuant to paragraph (4) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.

(7) For the purpose of this regulation—

- (a) “part-week” means a period to which sub-section (1A) of section 21 of the Act (amount etc. of income support) applies;
- (b) “relevant week” means the benefit week or part-week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 51(1)—
  - (i) was first taken into account for the purpose of determining his entitlement to income support; or
  - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to income support on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, income support;

and where more than one benefit week or part-week is identified by reference to heads (i) and (ii) of this sub-paragraph the later or latest such benefit week or, as the case may be, the later or latest such part-week;

- (c) “relevant subsequent week” means the benefit week or part-week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.]

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### Textual Amendments

**F423** Reg. 51A inserted (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990](#) (S.I. 1990/1776), regs. 1(1)(a), **6** (with reg. 1(2))

**F424** Reg. 51A(3)(d) added (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993](#) (S.I. 1993/315), reg. 1(1)(b), **Sch. para. 4**

## Capital jointly held

**52.** Except where a claimant possesses capital which is disregarded under regulation 51 (4) (notional capital), where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession [<sup>F425</sup>to an equal share of the whole beneficial interest therein; and the value of that equal share shall be calculated by taking the value of the whole beneficial interest calculated in accordance with the foregoing provisions of this Chapter, as though—

- (a) that interest is solely owned by the claimant; and
- (b) in the case of a dwelling, none of the other joint owners occupies the dwelling concerned,

and dividing the same by the number of persons who have a beneficial interest in the capital in question.]

### Textual Amendments

**F425** Words in [reg. 52](#) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995](#) (S.I. 1995/2303), regs. 1(1)(a), **6(6)** (with reg. 8)

### Commencement Information

**I52** Reg. 52 in force at 11.4.1988, see reg. 1

## Calculation of tariff income from capital

**53.**—(1) [<sup>F426</sup>Except where the circumstances prescribed in paragraph (1B) apply to the claimant,] where the claimant's capital calculated in accordance with this Part exceeds £3,000 it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £3,000 but not exceeding [<sup>F427</sup>£8,000].

[<sup>F428</sup>(1A) Where the circumstances prescribed in paragraph (1B) apply to the claimant and that claimant's capital calculated in accordance with this Part exceeds £10,000, it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £10,000 but not exceeding £16,000.

(1B) For the purposes of paragraph (1A) and regulation 45, the prescribed circumstances are that the claimant lives permanently in—

- (a) a residential care or nursing home, or residential accommodation and that home or accommodation provides board and personal care for the claimant by reason of his old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder; or
- (b) an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society; or

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- (b) accommodation provided under section 3 of, and Part II of the Schedule to, the Polish Resettlement Act 1947 (provision of accommodation in camps) where the claimant requires personal care and is provided with it in the accommodation; and in this sub-paragraph, "personal care" means care which includes assistance with bodily functions where such assistance is required.

(1C) For the purposes of paragraph (1B), a claimant shall be treated as living permanently in such home or accommodation where he is absent—

- (a) from a home or accommodation referred to in sub-paragraph (a) or (b) of paragraph (1B)—
- (i) in the case of a claimant referred to in regulation 19(2) or in the case of a person over pensionable age, for a period not exceeding 52 weeks, and
  - (ii) in any other case, for a period not exceeding 13 weeks;
- (b) from accommodation referred to in sub-paragraph (c) of paragraph (1B), where the claimant, with the agreement of the manager of the accommodation, intends to return to the accommodation in due course.]

(2) Notwithstanding [<sup>F429</sup>paragraphs (1) and (1A)], where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly income of £1.

(3) For the purposes of [<sup>F429</sup>paragraphs (1) and (1A)], capital includes any income treated as capital under regulations <sup>F430</sup>... 48 and 60 (<sup>F430</sup>...income treated as capital and liable relative payments treated as capital).

[<sup>F431</sup>(4) For the purposes of this regulation, the definition of "residential accommodation" in regulation 21(3) (applicable amounts of income support in special cases) shall have effect as if, after the words "subject to the following provisions of this regulation", there were inserted "(except paragraphs (4) and (4A))".]

#### Textual Amendments

- F426** Words in reg. 53(1) inserted (8.4.1996) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/462), regs. 1(2), **12(1)(b)(i)**
- F427** Sum in Reg. 53(1) substituted (9.4.1990) by The Income-Related Benefits (Miscellaneous Amendments) Regulations 1990 (S.I. 1990/671), regs. 1(1)(c), **5(2)**
- F428** Reg. 53(1A)-(1C) inserted (8.4.1996) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/462), regs. 1(2), **12(1)(b)(ii)**
- F429** Words in reg. 53(2)(3) substituted (8.4.1996) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/462), regs. 1(2), **12(1)(b)(iii)**
- F430** Words in reg. 53(3) omitted (12.12.1988) by virtue of The Income Support (General) Amendment No. 5 Regulations 1988 (S.I. 1988/2022), regs. 1(1)(a), **13**
- F431** Reg. 53(4) added (8.4.1996) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/462), regs. 1(2), **12(1)(b)(iv)**

#### Modifications etc. (not altering text)

- C11** Reg. 53(3) modified (1.4.1993) by The National Assistance (Assessment of Resources) Regulations 1992 (S.I. 1992/2977), regs. 1, **28**

#### Commencement Information

- I53** Reg. 53 in force at 11.4.1988, see reg. 1

## CHAPTER VII

### liable relatives

#### Interpretation

54. In this Chapter, unless the context otherwise requires—

“claimant” includes a young claimant;

“liable relative” means—

- (a) a spouse or former spouse of a claimant or of a member of the claimant's family;
- (b) a parent of a child or young person who is a member of the claimant's family or of a young claimant;
- (c) a person who has not been adjudged to be the father of a child or young person who is a member of the claimant's family or of a young claimant where that person is contributing towards the maintenance of that child, young person or young claimant and by reason of that contribution he may reasonably be treated as the father of that child, young person or young claimant;
- (d) a person liable to maintain another person by virtue of section 26(3)(c) of the Act (liability to maintain) where the latter is the claimant or a member of the claimant's family,

and, in this definition, a reference to a child's, young person's or young claimant's parent includes any person in relation to whom the child, young person or young claimant was treated as a child or a member of the family;

“payment” means a periodical payment or any other payment made by or derived from a liable relative including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by him but only from the date on which [<sup>F432</sup>it could be expected to be acquired were an application made]; but it does not include any payment—

- (a) arising from a disposition of property made in contemplation of, or as a consequence of—
  - (i) an agreement to separate; or
  - (ii) any proceedings for judicial separation, divorce or nullity of marriage;
- (b) made after the death of the liable relative;
- (c) made by way of a gift but not in aggregate or otherwise exceeding £250 in the period of 52 weeks beginning with the date on which the payment, or if there is more than one such payment the first payment, is made; and, in the case of a claimant who continues to be in receipt of income support at the end of the period of 52 weeks, this provision shall continue to apply thereafter with the modification that any subsequent period of 52 weeks shall begin with the first day of the benefit week in which the first payment is made after the end of the previous period of 52 weeks;
- (d) to which regulation 44(2) applies (modifications in respect of children and young persons);
- (e) made—
  - (i) to a third party in respect of the claimant or a member of the claimant's family; or
  - (ii) to the claimant or to a member of the claimant's family in respect of a third party, where having regard to the purpose of the payment, the terms under which it is made and its amount it is unreasonable to take it into account;
- (f) in kind;

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- (g) to, or in respect of, a child or young person who is to be treated as not being a member of the claimant's household under regulation 16 (circumstances in which a person is to be treated as being or not being a member of the same household);
- (h) which is not a periodical payment, to the extent that any amount of that payment—
  - (i) has already been taken into account under this Part by virtue of a previous claim or determination; or
  - (ii) has been recovered under section 27(1) of the Act (prevention of duplication of payments) or is currently being recovered; or
  - (iii) at the time the determination is made, has been used by the claimant except where he has deprived himself of that amount for the purpose of securing entitlement to income support or increasing the amount of that benefit;

“periodical payment” means—

- (a) a payment which is made or is due to be made at regular intervals in pursuance of a court order or agreement for maintenance;
- (b) in a case where the liable relative has established a pattern of making payments at regular intervals, any such payment;
- (c) any payment not exceeding the amount of income support payable had that payment not been made;
- (d) any payment representing a commutation of payments to which sub-paragraphs (a) or (b) of this definition applies whether made in arrears or in advance,

but does not include a payment due to be made before the first benefit week pursuant to the claim which is not so made;

“young claimant ” means a person aged 16 or over but under 19 who makes a claim for income support.

#### **Textual Amendments**

**F432** Words in reg. 54 substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **23**

#### **Commencement Information**

**I54** Reg. 54 in force at 11.4.1988, see reg. 1

### **Treatment of liable relative payments**

**55.** Except where regulation 60(1) (liable relative payments to be treated as capital) applies a payment shall—

- (a) to the extent that it is not a payment of income, be treated as income;
- (b) be taken into account in accordance with the following provisions of this Chapter.

#### **Commencement Information**

**I55** Reg. 55 in force at 11.4.1988, see reg. 1

### **Period over which periodical payments are to be taken into account**

**56.—(1)** The period over which a periodical payment is to be taken into account shall be—



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- (a) in a case where the payment is made at regular intervals, a period equal to the length of that interval;
  - (b) in a case where the payment is due to be made at regular intervals but is not so made, such number of weeks as is equal to the number (and any fraction shall be treated as a corresponding fraction of a week) obtained by dividing the amount of that payment by the weekly amount of that periodical payment as calculated in accordance with regulation 58(4) (calculation of the weekly amount of a liable relative payment);
  - (c) in any other case, a period equal to a week.
- (2) The period under paragraph (1) shall begin on the date on which the payment is treated as paid under regulation 59 (date on which a liable relative payment is to be treated as paid).

**Commencement Information**

**I56** Reg. 56 in force at 11.4.1988, see reg. 1

**Period over which payments other than periodical payments are to be taken into account**

**57.**—(1) Subject to paragraph (2), the number of weeks over which a payment other than a periodical payment is to be taken into account shall be equal to the number (and any fraction shall be treated as a corresponding fraction of a week) obtained by dividing that payment by—

- (a) where the payment is in respect of the claimant or the claimant and any child or young person who is a member of the family, the aggregate of £2 and the amount of income support which would be payable had the payment not been made;
- [<sup>F433</sup>(b) where the payment is in respect of one, or more than one, child or young person who is a member of the family, the lesser of the amount (or the aggregate of the amounts) prescribed under Schedule 2, in respect of—
  - (i) the personal allowance of the claimant and each such child or young person;
  - (ii) any family and lone parent premium;
  - (iii) any disabled child premium in respect of such a child; and
  - (iv) any carer premium if, but only if, that premium is payable because the claimant is in receipt, or is treated as being in receipt, of invalid care allowance by reason of the fact that he is caring for such a child or young person who is severely disabled;and the aggregate of £2 and the amount of income support which would be payable had the payment not been made.]

(2) Where a liable relative makes a periodical payment and any other payment concurrently and the weekly amount of that periodical payment, as calculated in accordance with regulation 58 (calculation of the weekly amount of a liable relative payment), is less than—

- (a) in a case where the periodical payment is in respect of the claimant or the claimant and any child or young person who is a member of the family, the aggregate of £2 and the amount of income support which would be payable had the payments not been made; or
- (b) in a case where the periodical payment is in respect of one or more than one child or young person who is a member of the family, the aggregate of the amount prescribed in Schedule 2 in respect of each such child or young person and any family and lone parent premium,

that other payment shall, subject to paragraph (3), be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing that payment by an amount equal to the extent of the difference

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between the amount referred to in sub-paragraph (a) or (b), as the case may be, and the weekly amount of the periodical payment.

(3) If—

- (a) the liable relative ceases to make periodical payments, the balance (if any) of the other payment shall be taken into account over the number of weeks equal to the number (and any fraction shall be treated as a corresponding fraction of a week) obtained by dividing that balance by the amount referred to in sub-paragraph (a) or (b) of paragraph (1), as the case may be;
- (b) the amount of any subsequent periodical payment varies, the balance (if any) of the other payment shall be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing that balance by an amount equal to the extent of the difference between the amount referred to in sub-paragraph (a) or (b) of paragraph (2) and the weekly amount of the subsequent periodical payment.

(4) The period under paragraph (1) or (2) shall begin on the date on which the payment is treated as paid under regulation 59 (date on which a liable relative payment is treated as paid) and under paragraph (3) shall begin on the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

#### Textual Amendments

**F433** Reg. 57(1)(b) substituted (15.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(b), 7 (with reg. 1(2))

#### Commencement Information

**I57** Reg. 57 in force at 11.4.1988, see reg. 1

### Calculation of the weekly amount of a liable relative payment

**58.**—(1) Where a periodical payment is made or is due to be made at intervals of one week, the weekly amount shall be the amount of that payment.

(2) Where a periodical payment is made or is due to be made at intervals greater than one week and those intervals are monthly, the weekly amount shall be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(3) Where a periodical payment is made or is due to be made at intervals and those intervals are neither weekly nor monthly, the weekly amount shall be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(4) Where a payment is made and that payment represents a commutation of periodical payments whether in arrears or in advance, the weekly amount shall be the weekly amount of the individual periodical payments so commuted as calculated under paragraphs (1) to (3) as is appropriate.

(5) The weekly amount of a payment to which regulation 57 applies (period over which payments other than periodical payments are to be taken into account) shall be equal to the amount of the divisor used in calculating the period over which the payment or, as the case may be, the balance is to be taken into account.

#### Modifications etc. (not altering text)

**C12** Reg. 58(5) modified (1.4.1993) by [The National Assistance \(Assessment of Resources\) Regulations 1992 \(S.I. 1992/2977\)](#), regs. 1, **33(2)**

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**Commencement Information**

**I58** Reg. 58 in force at 11.4.1988, see reg. 1

**Date on which a liable relative payment is to be treated as paid**

**59.**—(1) A periodical payment is to be treated as paid—

- (a) in the case of a payment which is due to be made before the first benefit week pursuant to the claim, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid unless, having regard to the manner in which income support is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(2) Subject to paragraph (3), any other payment shall be treated as paid—

- (a) in the case of a payment which is made before the first benefit week pursuant to the claim, on the day in the week in which it is paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is paid unless, having regard to the manner in which income support is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(3) Any other payment paid on a date which falls within the period in respect of which a previous payment is taken into account, not being a periodical payment, is to be treated as paid on the first day following the end of that period.

**Commencement Information**

**I59** Reg. 59 in force at 11.4.1988, see reg. 1

**Liable relative payments to be treated as capital**

**60.**—(1) Subject to paragraph (2), where a liable relative makes a periodical payment concurrently with any other payment, and the weekly amount of the periodical payment as calculated in accordance with regulation 58(1) to (4) (calculation of the weekly amount of a liable relative payment), is equal to or greater than the amount referred to in sub-paragraph (a) of regulation 57(2) (period over which payments other than periodical payments are to be taken into account) less the £2 referred to therein, or sub-paragraph (b) of that regulation, as the case may be, the other payment shall be treated as capital.

(2) If, in any case, the liable relative ceases to make periodical payments, the other payment to which paragraph (1) applies shall be taken into account under paragraph (1) of regulation 57 but, notwithstanding paragraph (4) thereof, the period over which the payment is to be taken into account shall begin on the first day of the benefit week following the last one in which a periodical payment was taken into account.

**Commencement Information**

**I60** Reg. 60 in force at 11.4.1988, see reg. 1

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## [<sup>F434</sup>CHAPTER VIIA CHILD SUPPORT

### Textual Amendments

**F434** Pt. V Ch. VIIA inserted (19.4.1993) by [The Social Security \(Miscellaneous Provisions\) Amendment Regulations 1993 \(S.I. 1993/846\)](#), regs. 1(1), 3 (with reg. 1(2))

### Interpretation

**60A.** In this Chapter—

“child support maintenance” means such periodical payments as are referred to in section 3(6) of the Child Support Act 1991;

“maintenance assessment” has the same meaning as in the Child Support Act 1991 by virtue of section 54 of that Act.

### Treatment of child support maintenance

**60B.** All payments of child support maintenance shall to the extent that they are not payments of income be treated as income and shall be taken into account on a weekly basis in accordance with the following provisions of this Chapter.

### Calculation of the weekly amount of payments of child support maintenance

**60C.—(1)** The weekly amount of child support maintenance shall be determined in accordance with the following provisions of this regulation.

(2) Where payments of child support maintenance are made weekly, the weekly amount shall be the amount of that payment.

(3) Where payments of child support maintenance are made monthly, the weekly amount shall be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(4) Where payments of child support are made at intervals and those intervals are not a week or a month, the weekly amount shall be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(5) Where a payment is made and that payment represents a commutation of child support maintenance the weekly amount shall be the weekly amount of the individual child support maintenance payments so commuted as calculated in accordance with paragraphs (2) to (4) as appropriate.

(6) Paragraph (2), (3) or, as the case may be, (4) shall apply to any payments made at the intervals specified in that paragraph whether or not—

(a) the amount paid is in accordance with the maintenance assessment, and

(b) the intervals at which the payments are made are in accordance with the intervals specified by the Secretary of State under regulation 4 of the Child Support (Collection and Enforcement) Regulations 1992.

### Date on which child support maintenance is to be treated as paid

**60D.** A payment of child support maintenance is to be treated as paid—

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- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is paid or the first day of the first succeeding benefit week in which it is practicable to take it into account.]

## CHAPTER VIII

### students

#### Interpretation

61. In this Chapter, unless the context otherwise requires—

“a course of advanced education” means—

- (a) a full-time course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education, a higher national diploma, [<sup>F435</sup>a higher national diploma or higher national certificate of either the Business & [<sup>F436</sup>Technology] Education Council] or the Scottish Vocational Education Council or a teaching qualification; or
- (b) any other full-time course which is a course of a standard above ordinary national diploma, [<sup>F437</sup>a national diploma or national certificate of either the Business & [<sup>F436</sup>Technology] Education Council or the Scottish Vocational Education Council], a general certificate of education (advanced level) a Scottish certificate of education [<sup>F438</sup>(higher level)] or a Scottish certificate of sixth year studies;

“contribution” means any contribution in respect of the income of any other person which a Minister of the Crown or an education authority takes into account in assessing the amount of the student's grant and by which that amount is, as a consequence, reduced;

“covenant income” means the income net of tax at the basic rate payable to a student under a Deed of Covenant by a person whose income is, or is likely to be, taken into account in assessing the student's grant or award;

“education authority” means a government department, a local education authority as defined in section 114(1) of the Education Act 1944 <sup>F439</sup> (interpretation), an education authority as defined in section 135(1) of the Education (Scotland) Act [<sup>F440</sup>1980]<sup>F441</sup> (interpretation), an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986<sup>F442</sup>, any body which is a research council for the purposes of the Science and Technology Act 1965<sup>F443</sup> or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Great Britain.

“grant” means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary [<sup>F444</sup>but does not include a payment derived from funds made available by the Secretary of State for the purpose of assisting students in financial difficulties under section 100 of the Education Act 1944, sections 131 and 132 of the Education Reform Act 1988 or section 73 of the Education (Scotland) Act 1980];

“grant income” means—

- (a) any income by way of a grant;
- (b) in the case of a student other than one to whom sub-paragraph (c) refers, any contribution which has been assessed whether or not it has been paid;
- (c) in the case of a student to whom paragraph 1, 2 or 7 of Schedule 1 applies (lone parent or disabled student), any contribution which has been assessed and which has been paid;

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and any such contribution which is paid by way of a covenant shall be treated as part of the student's grant income.

[<sup>F445</sup>“last day of the course” means the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;]

“period of study” means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course [<sup>F446</sup>and ending with the last day of the course];
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, [<sup>F447</sup>other than the final year of the course,] the period beginning with the start of the course or, as the case may be, that year's start and ending with either—
  - (i) the day before the start of the next year of the course in a case where the student's grant is assessed at a rate appropriate to his studying throughout the year, or, if he does not have a grant, where it would have been assessed at such a rate had he had one; or
  - (ii) in any other case the day before the start of the normal summer vacation appropriate to his course;
- (c) [<sup>F448</sup>in the final year of a course of study of more than one year, the period beginning with that year's start and ending with the last day of the course;]

“periods of experience” has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1987<sup>F449</sup>;

“sandwich course” has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1987;

“standard maintenance grant” means—

- (a) except where paragraph (b) applies, in the case of a student attending a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 1987 for such a student;
- (b) in the case of a student residing at his parents' home the amount specified in paragraph 3(2) thereof;
- (c) in any other case, the amount specified in paragraph 2(2) other than in sub-paragraph (a) or (b) thereof;

[<sup>F450</sup>“student” means a person, other than a person in receipt of a training allowance,] aged less than 19 who is attending a full-time course of advanced education or, as the case may be, a person aged 19 or over but under pensionable age who is attending a full-time course of study at an educational establishment; and for the purposes of this definition—

- (a) a person who has started on such a course shall be treated as attending it <sup>F451</sup>... until [<sup>F452</sup>the last day of the course] or such earlier date as he abandons it or is dismissed from it;
- (b) a person on a sandwich course shall be treated as attending a full-time course of advanced education or, as the case may be, of study;

“year” in relation to a course, means the period of 12 months beginning on 1st January, 1st April or 1st September according to whether the academic year of the course in question begins in the spring, the summer or the autumn respectively.

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### Textual Amendments

- F435** Words in reg. 61 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992](#) (S.I. 1992/2155), regs. 1(1), **19(a)**
- F436** Word in reg. 61 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993](#) (S.I. 1993/2119), regs. 1(1)(a), **16**
- F437** Words in reg. 61 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992](#) (S.I. 1992/2155), regs. 1(1), **19(b)(i)**
- F438** Words in reg. 61 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992](#) (S.I. 1992/2155), regs. 1(1), **19(b)(ii)**
- F439** 1944 c. 31 as amended by [S.I. 1974/595](#) article 3(22) Schedule 1 Part I and by [S.I. 1977/293](#), **article 4(1)**.
- F440** Words in reg. 61 inserted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988](#) (S.I. 1988/2022), regs. 1(1)(a), **14**
- F441** 1980 c. 44.
- F442** [S.I. 1986/594](#) (NI 3).
- F443** 1965 c. 4.
- F444** Words in reg. 61 added (1.9.1990) by [The Social Security Benefits \(Student Loans and Miscellaneous Amendments\) Regulations 1990](#) (S.I. 1990/1549), regs. 1(1)(a), **5(5)** (with reg. 7(1))
- F445** Words in reg. 61 inserted (5.8.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991](#) (S.I. 1991/1559), regs. 1(1)(a), **10(a)** (with reg. 1(2))
- F446** Words in reg. 61 substituted (5.8.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991](#) (S.I. 1991/1559), regs. 1(1)(a), **10(b)(i)** (with reg. 1(2))
- F447** Words in reg. 61 inserted (5.8.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991](#) (S.I. 1991/1559), regs. 1(1)(a), **10(b)(ii)** (with reg. 1(2))
- F448** Words in reg. 61 inserted (5.8.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991](#) (S.I. 1991/1559), regs. 1(1)(a), **10(b)(iii)** (with reg. 1(2))
- F449** [S.I. 1987/1261](#).
- F450** Words in reg. 61 substituted (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992](#) (S.I. 1992/468), regs. 1(1), **5(1)** (with reg. 1(2))
- F451** Words in reg. 61 omitted (1.8.1995) by virtue of [The Social Security Benefits \(Miscellaneous Amendments\) Regulations 1995](#) (S.I. 1995/1742), regs. 1(1)(a), **2(2)(e)**
- F452** Words in reg. 61 substituted (5.8.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991](#) (S.I. 1991/1559), regs. 1(1)(a), **10(c)** (with reg. 1(2))

### Commencement Information

- I61** Reg. 61 in force at 11.4.1988, see reg. 1

### Calculation of grant income

**62.**—(1) The amount of a student's grant income to be taken into account shall, subject to <sup>[F453]</sup>paragraphs (2) and (2A)], be the whole of his grant income.

(2) There shall be disregarded from the amount of a student's grant income any payment—

- (a) intended to meet tuition fees or examination fees;
- (b) intended to meet the cost of special equipment for a student on a course which began before 1st September 1986 in architecture, art and design, home economics, landscape architecture, medicine, music, ophthalmic optics, orthoptics, physical education,

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physiotherapy, radiography, occupational therapy, dental hygiene, dental therapy, remedial gymnastics, town and country planning and veterinary science or medicine;

- (c) intended to meet additional expenditure incurred by a disabled student in respect of his attendance on a course;
- (d) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
- (e) on account of the student maintaining a home at a place other than that at which he resides while attending his course but only to the extent that his rent or rates is not met by housing benefit;
- (f) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of him;
- (g) intended to meet the cost of books and equipment (other than special equipment) or if not so intended an amount equal to [<sup>F454</sup>£278] towards such costs;
- (h) intended to meet travel expenses incurred as a result of his attendance on the course.

[<sup>F455</sup>(2A) Where in pursuance of an award a student is in receipt of a grant in respect of maintenance under regulation 17(b) of the Education (Mandatory Awards) Regulations 1991, there shall be excluded from his grant income a sum equal to the amount from time to time specified in paragraph 7(4) of Schedule 2 to those Regulations, being the amount to be disregarded in respect of travel costs in the particular circumstances of his case]

(3) A student's grant income [<sup>F456</sup>, except any amount intended for the maintenance of dependants under [<sup>F457</sup>Part 3 of Schedule 2 to the Education (Mandatory Awards) Regulations 1991] or intended for an older student under Part 4 of that Schedule,] shall be apportioned—

- (a) subject to paragraph (4), in a case where it is attributable to the period of study, equally between the weeks in that period;
- (b) in any other case, equally between the weeks in the period in respect of which it is payable.

[<sup>F458</sup>(3A) Any amount intended for the maintenance of dependants or for an older student under the provisions referred to in paragraph (3) shall be apportioned equally over a period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53.]

(4) In the case of a student on a sandwich course, any periods of experience within the period of study shall be excluded and the student's grant income shall be apportioned equally between the remaining weeks in that period.

#### Textual Amendments

- F453** Words in reg. 62(1) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), **20**
- F454** Word in reg. 62(2)(g) substituted (1.9.1995) by [The Social Security Benefits \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/1742\)](#), regs. 1(1)(d)(ii), **3(2)(e)** (with reg. 1(1)(d)(i))
- F455** Reg. 62(2A) inserted (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **5(2)(a)** (with reg. 1(2))
- F456** Words in reg. 62(3) inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **24(a)**
- F457** Words in reg. 62(3) substituted (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **5(2)(b)** (with reg. 1(2))
- F458** Reg. 62(3A) inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **24(b)**



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### Commencement Information

**I62** Reg. 62 in force at 11.4.1988, see reg. 1

### Calculation of covenant income where a contribution is assessed

**63.**—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of his covenant income to be taken into account for that period and any summer vacation immediately following shall be the whole amount of his covenant income less, subject to paragraph (3), the amount of the contribution.

(2) The weekly amount of the student's covenant income shall be determined—

- (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or, if there are 53 benefit weeks (including part weeks) in the year, 53; and
- (b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution shall be treated as increased by the amount, if any, by which the amount excluded under <sup>F459</sup>regulation 62(2)(h) (calculation of grant income) falls short of the amount for the time being specified in paragraph 7(4)(i) of Schedule 2 to the Education (Mandatory Awards) Regulations 1991 (travel expenditure).]

### Textual Amendments

**F459** Words in reg. 63(3) substituted (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), 5(3) (with reg. 1(2))

### Commencement Information

**I63** Reg. 63 in force at 11.4.1988, see reg. 1

### Covenant income where no grant income or no contribution is assessed

**64.**—(1) Where a student is not in receipt of income by way of a grant the amount of his covenant income shall be calculated as follows—

- (a) any sums intended for any expenditure specified in regulation 62(2)(a) to (f), (calculation of grant income) necessary as a result of his attendance on the course, shall be disregarded;
- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded, shall be apportioned equally between the weeks of the period of study and there shall be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under <sup>F460</sup>regulation 62(2)(g) and (h) and (2A)] (calculation of grant income) had the student been in receipt of the standard maintenance grant;
- (c) the balance, if any, shall be divided by 52 or, if there are 53 benefit weeks (including part weeks) in the year, 53 and treated as weekly income of which £5 shall be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenant income shall be calculated in accordance with sub-paragraphs (a) to (c) of paragraph (1), except that—

- (a) the value of the standard maintenance grant shall be abated by the amount of his grant income less an amount equal to the amount of any sums disregarded under regulation 62(2) (a) to (f); and

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- (b) the amount to be disregarded under paragraph (1)(b) shall be abated by an amount equal to the amount of any sums disregarded under [<sup>F460</sup>regulation 62(2)(g) and (h) and (2A)].

#### Textual Amendments

**F460** Words in reg. 64 substituted (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **5(4)** (with reg. 1(2))

#### Commencement Information

**I64** Reg. 64 in force at 11.4.1988, see reg. 1

### Relationship with amounts to be disregarded under Schedule 9

**65.** No part of a student's covenant income or grant income shall be disregarded under paragraph 15 of Schedule 9 (charitable and voluntary payments) and any other income [<sup>F461</sup>to which subparagraph (1) of that paragraph applies shall be disregarded only to the extent that] the amount disregarded under regulation 63(2)(b) (calculation of covenant income where a contribution is assessed) or, as the case may be, 64(1)(c) (covenant income where no grant income or no contribution is assessed) is less than [<sup>F462</sup>£20].

#### Textual Amendments

**F461** Words in reg. 65 substituted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **14(a)**

**F462** Sum in reg. 65 substituted (8.4.1996) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/462\)](#), regs. 1(2), **8(a)**

#### Commencement Information

**I65** Reg. 65 in force at 11.4.1988, see reg. 1

### Other amounts to be disregarded

**66.—(1)** For the purposes of ascertaining income [<sup>F463</sup>other than grant income, covenant income and loans treated as income in accordance with regulation 66A], any amounts intended for any expenditure specified in regulation 62(2) (calculation of grant income) necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 62(2) [<sup>F464</sup>and (2A)], 63(3) and 64(1)(a) or (b) (calculation of grant income and covenant income) on like expenditure.

(2) Where a claim is made in respect of any period in the normal summer vacation and any income is payable under a Deed of Covenant which commences or takes effect after the first day of that vacation, that income shall be disregarded.

#### Textual Amendments

**F463** Words in [reg. 66\(1\)](#) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(b), **5(a)**

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**F464** Words in [reg. 66\(1\)](#) inserted (with effect in accordance with [reg. 1\(3\)](#) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), [regs. 1\(1\)\(b\)](#), [5\(b\)](#)

#### Commencement Information

**I66** Reg. 66 in force at 11.4.1988, see [reg. 1](#)

#### [<sup>F465</sup>Treatment of student loans

**66A.**—(1) A loan which is made to a student pursuant to arrangements made under section 1 of the Education (Student Loans) Act 1990 [<sup>F466</sup>or article 3 of the Education (Student Loans) (Northern Ireland) Order 1990] shall be treated as income.

(2) In calculating the weekly amount of the loan to be taken into account as income—

- (a) except where sub-paragraph (b) applies, the loan shall be apportioned equally between the weeks in the academic year in respect of which the loan is payable;
- (b) in the case of a loan which is payable in respect of the final academic year of the course or if the course is only of one academic year's duration, in respect of that year the loan shall be apportioned equally between the weeks in the period beginning with the start of the final academic year or, as the case may be, the single academic year and ending with [<sup>F467</sup>the last day of the course,]

and from the weekly amount so apportioned there shall be disregarded £10.

[<sup>F468</sup>(3) For the purposes of this regulation a student shall be treated as possessing the maximum amount of any loan referred to in paragraph (1) which he will be able to acquire in respect of an academic year by taking reasonable steps to do so.]]

#### Textual Amendments

- F465** Reg. 66A inserted (1.9.1990) by [The Social Security Benefits \(Student Loans and Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/1549\)](#), [regs. 1\(1\)\(a\)](#), [5\(7\)](#) (with [reg. 7\(1\)](#))
- F466** Words in [reg. 66A\(1\)](#) inserted (13.3.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), [regs. 1\(1\)\(a\)](#), [9](#) (with [reg. 1\(2\)](#))
- F467** Words in [reg. 66A\(2\)\(b\)](#) substituted (5.8.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), [regs. 1\(1\)\(a\)](#), [12](#) (with [reg. 1\(2\)](#))
- F468** Reg. 66A(3) substituted (8.4.1996) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/462\)](#), [regs. 1\(2\)](#), [9\(1\)\(2\)\(a\)](#)

#### Disregard of contribution

**67.** Where the claimant or his partner is a student and [<sup>F469</sup>, for the purposes of assessing a contribution to the student's grant, the other partner's income has been taken into account, an amount equal to that contribution shall be disregarded for the purposes of assessing that other partner's income.]

#### Textual Amendments

- F469** Words in [reg. 67](#) substituted (8.4.1996) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/462\)](#), [regs. 1\(2\)](#), [10\(1\)\(2\)\(a\)](#)

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**Commencement Information**

**I67** Reg. 67 in force at 11.4.1988, see reg. 1

**Income treated as capital**

**68.** Any amount by way of a refund of tax deducted from a student's income shall be treated as capital.

**Commencement Information**

**I68** Reg. 68 in force at 11.4.1988, see reg. 1

**Disregard of changes occurring during summer vacation**

**69.** In calculating a student's income an adjudication officer shall disregard any change in the standard maintenance grant occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of his period of study, from the date on which the change occurred up to the end of that vacation.

**Commencement Information**

**I69** Reg. 69 in force at 11.4.1988, see reg. 1

**PART VI**

**URGENT CASES**

**Urgent cases**

**70.**—(1) In a case to which this regulation applies, a claimant' weekly applicable amount and his income and capital shall be calculated in accordance with the following provisions of this Part.

(2) Subject to paragraph (4), this regulation applies to—

- (a) a claimant to whom paragraph (3) (certain persons from abroad) applies;
- (b) a claimant who is treated as possessing income under regulation 42(3) (notional income);

<sup>F470</sup>(c) .....

(3) This paragraph applies to a person from abroad within the meaning of regulation 21 (3) (special cases) who—

- (a) having, during any one period of limited leave of a kind referred to in sub-paragraph (a) of that definition (including any period as extended), supported himself without recourse to public funds other than any such recourse by reason of the previous application of this sub-paragraph, is temporarily without funds during that period of leave because remittances to him from abroad have been disrupted provided that there is a reasonable expectation that his supply of funds will be resumed;

[<sup>F471</sup>(b) is an asylum seeker for the purposes of paragraph 3A;]

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[<sup>F472</sup>(c) is a person to whom sub-paragraph (i) of that definition (sponsored immigrant) applies and the person or persons who gave the undertaking to provide for his maintenance and accommodation has, as the case may be have, died;]

<sup>F473</sup>(d) . . . . .

<sup>F474</sup>(e) . . . . .

<sup>F474</sup>(f) . . . . .

<sup>F474</sup>(g) . . . . .

<sup>F474</sup>(h) . . . . .

<sup>F474</sup>(i) . . . . .

<sup>F474</sup>(j) . . . . .

[<sup>F475</sup>(3A) For the purposes of this paragraph, a person—

[<sup>F476</sup>(a) is an asylum seeker when he submits on his arrival (other than on his re-entry) in the United Kingdom from a country outside the Common Travel Area a claim for asylum to the Secretary of State that it would be contrary to the United Kingdom’s obligations under the Convention for him to be removed from, or required to leave, the United Kingdom and that claim is recorded by the Secretary of State as having been made; or

(aa) becomes, while present in Great Britain, an asylum seeker when—

(i) the Secretary of State makes a declaration to the effect that the country of which he is a national is subject to such a fundamental change in circumstances that he would not normally order the return of a person to that country, and

(ii) he submits, within a period of 3 months from the day that declaration was made, a claim for asylum to the Secretary of State under the Convention relating to the Status of Refugees, and

(iii) his claim for asylum under that Convention is recorded by the Secretary of State as having been made; and;]

[<sup>F477</sup>(b) ceases to be an asylum seeker—

(i) in the case of a claim for asylum which, on or after 5th February 1996, is recorded by the Secretary of State as having been determined (other than on appeal) or abandoned, on the date on which it is so recorded, or

(ii) in the case of a claim for asylum which is recorded as determined before 5th February 1996 and in respect of which there is either an appeal pending on 5th February 1996 or an appeal is made within the time limits specified in rule 5 of the Asylum Appeals (Procedure) Rules 1993, on the date on which that appeal is determined; and]

(3B) In paragraph (3A), “the Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the protocol to that Convention<sup>F478</sup>; and “the Common Travel Area” means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland collectively.]]

(4) This regulation shall only apply to a person to whom paragraph (2)(b) [<sup>F479</sup>applies, where the income he is treated as possessing by virtue of regulation 42(3) (notional income)] is not readily available to him; and

(a) the amount of income support which would be payable but for this Part is less than the amount of income support payable by virtue of the provisions of this Part; and

(b) the adjudication officer is satisfied that, unless the provisions of this Part are applied to the claimant, the claimant or his family will suffer hardship.

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### Textual Amendments

- F470** Reg. 70(2)(c) omitted (9.10.1989) by virtue of [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **16(a)**
- F471** Reg. 70(3)(b) substituted (2.8.1993) by [The Income Support \(General\) Amendment No. 3 Regulations 1993 \(S.I. 1993/1679\)](#), regs. 1(1), **2(2)(a)** (with reg. 2(4))
- F472** Reg. 70(3)(c) substituted (5.2.1996) by [The Social Security \(Persons From Abroad\) Miscellaneous Amendments Regulations 1996 \(S.I. 1996/30\)](#), regs. 1(1), **8(3)(a)** (with reg. 12)
- F473** Reg. 70(3)(d) omitted (2.8.1993) by virtue of [The Income Support \(General\) Amendment No. 3 Regulations 1993 \(S.I. 1993/1679\)](#), regs. 1(1), **2(2)(b)** (with reg. 2(4))
- F474** Reg. 70(3)(e)-(j) omitted (5.2.1996) by virtue of [The Social Security \(Persons From Abroad\) Miscellaneous Amendments Regulations 1996 \(S.I. 1996/30\)](#), regs. 1(1), **8(3)(b)** (with reg. 12)
- F475** Reg. 70(3A)(3B) inserted (2.8.1993) by [The Income Support \(General\) Amendment No. 3 Regulations 1993 \(S.I. 1993/1679\)](#), regs. 1(1), **2(3)** (with reg. 2(4))
- F476** Reg. 70(3A)(a)(aa) substituted for reg. 70(3A)(a) (5.2.1996) by [The Social Security \(Persons From Abroad\) Miscellaneous Amendments Regulations 1996 \(S.I. 1996/30\)](#), regs. 1(1), **8(3)(c)** (with reg. 12)
- F477** Reg. 70(3A)(b) substituted (5.2.1996) by [The Social Security \(Persons From Abroad\) Miscellaneous Amendments Regulations 1996 \(S.I. 1996/30\)](#), regs. 1(1), **8(3)(d)** (with reg. 12)
- F478** Words in reg. 70(3B) added (5.2.1996) by [The Social Security \(Persons From Abroad\) Miscellaneous Amendments Regulations 1996 \(S.I. 1996/30\)](#), regs. 1(1), **8(3)(e)** (with reg. 12)
- F479** Words in reg. 70(4) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **16(b)**

### Commencement Information

- I70** Reg. 70 in force at 11.4.1988, see reg. 1

### Applicable amounts in urgent cases

- 71.**—(1) For the purposes of calculating any entitlement to income support under this Part—
- (a) except in a case to which [<sup>F480</sup>sub-paragraph (b), (c) or (d),] applies, a claimant' weekly applicable amount shall be the aggregate of—
- (i) 90 per cent of the amount applicable in respect of himself or, if he is a member of a couple or of a polygamous marriage, of the amount applicable in respect of both of them under paragraph 1 (1), (2) or (3) of Schedule 2 or, as the case may be, the amount applicable in respect of them under regulation 18 (polygamous marriages); and where regulation 22 (reduction in applicable amounts in certain cases of actual or notional unemployment benefit disqualification) applies, the reference in this head to 90 per cent of the amount applicable shall be construed as a reference to 90 per cent of the relevant amount under that regulation reduced by the percentage specified in paragraph (1) or (2), as the case may be, of that regulation;
- (ii) the amount applicable under paragraph 2 of Schedule 2 in respect of any child or young person who is a member of his family except a child or young person whose capital, if calculated in accordance with Part V in like manner as for the claimant, [<sup>F481</sup>except as provided in regulation 44(1) (modifications in respect of children and young person)], would exceed £3,000;
- (iii) the amount, if applicable, specified in [<sup>F482</sup>Part II or III of Schedule 2 (premiums)]; and

- (iv) any amounts applicable under [<sup>F483</sup>regulation 17(1)(e) or, as the case may be, 18(1)(f) (housing costs)]; [<sup>F484</sup>and
- (v) the amount of the protected sum which may be applicable to him determined in accordance with Schedule 3A][<sup>F485</sup>or, as the case may be, 3B];
- [<sup>F486</sup>(vi) the amount, if applicable, specified in paragraph 2A of Schedule 2;]
- (b) [<sup>F487</sup><sup>F488</sup>where the claimant is a resident in ... .. a residential care home or a nursing home [<sup>F489</sup>and has a preserved right], his weekly applicable amount shall be the aggregate of—
  - (i) 90 per cent of the amount of the allowance for personal expenses prescribed in paragraph 13 (a) of Schedule 4 (applicable amounts of persons in residential care and nursing homes) [<sup>F490</sup>... or, if he is a member of a couple or of a polygamous marriage, of the amount applicable in respect of both or all of them; and where regulation 22 (reduction in applicable amounts in certain cases of actual or notional unemployment benefit disqualification) applies, the reference in this head to 90 per cent of the amount so reduced shall be construed as a reference to 90 per cent of the relevant amount under that regulation reduced by the percentage specified in paragraph (1) or (2), as the case may be, of that regulation;
  - (ii) the amount applicable under paragraph 13 (b) to (e) of Schedule 4 [<sup>F491</sup>... in respect of any child or young person who is a member of his family except a child or young person whose capital, if calculated in accordance with Part V in like manner as for the claimant, [<sup>F481</sup>except as provided in regulation 44(1) (modifications in respect of children and young person)], would exceed £3,000;
  - (iii) the amount in respect of the weekly charge for his accommodation calculated in accordance with regulation 19 and Schedule 4 [<sup>F492</sup>... except any amount in respect of a child or young person who is a member of the family and whose capital, if calculated in accordance with Part V in like manner as for the claimant, [<sup>F481</sup>except as provided in regulation 44(1) (modifications in respect of children and young person)], would exceed £3,000.
- (c) where the claimant is resident in residential accommodation, his weekly applicable amount shall be the aggregate of—
  - (i) [<sup>F493</sup>98 per cent] of the amount [<sup>F494</sup>... referred to in column (2) of paragraph 13 (a) to (c) and (e) of Schedule 7 (applicable amounts in special cases) applicable to him;
  - (ii) the amount applicable under column (2) of paragraph 13 (d) of Schedule 7, in respect of any child or young person who is a member of his family except a child or young person whose capital, if calculated in accordance with Part V in like manner as for the claimant, [<sup>F481</sup>except as provided in regulation 44(1) (modifications in respect of children and young person)], would exceed £3,000;
  - [<sup>F495</sup>(iii) .....
- [<sup>F496</sup>(d) except where sub-paragraph (b) or (c) applies, in the case of a person to whom any paragraph, other than paragraph 17, in column (1) of Schedule 7 (special cases) applies, the amount shall be 90% of the amount applicable in column 2 of that Schedule in respect of the claimant and partner (if any), plus, if applicable—
  - (i) any amount in respect of a child or young person who is a member of the family except a child or young person whose capital, if calculated in accordance with Part V in like manner as for the claimant, [<sup>F481</sup>except as provided in regulation 44(1) (modifications in respect of children and young person)], would exceed £3,000;
  - (ii) any premium under [<sup>F497</sup>Part II or III of Schedule 2]; and

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[<sup>F498</sup>(iii) any amounts applicable under regulation 17(1)(e) or, as the case may be, 18(1)(f)]<sup>F499</sup> and

(iv) the amount of the protected sum which may be applicable to him determined in accordance with Schedule 3A]<sup>F500</sup> or, as the case may be, 3B].

(2) The period for which a claimant's weekly applicable amount is to be calculated in accordance with paragraph (1) where paragraph (3) of regulation 70 (urgent cases) applies shall be—

(a) in a case to which sub-paragraph (a) of paragraph (3) of that regulation applies, any period, or the aggregate of any periods, not exceeding 42 days during any one period of leave to which that regulation applies;

<sup>F501</sup>(b) .....

<sup>F501</sup>(c) .....

<sup>F501</sup>(d) .....

<sup>F501</sup>(e) .....

<sup>F501</sup>(f) .....

[<sup>F502</sup>(3) Where the calculation of a claimant's applicable amount under this regulation results in a fraction of a penny that fraction shall be treated as a penny.]

**Textual Amendments**

- F480** Words in reg. 71(1)(a) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **25(a)**
- F481** Words in reg. 71(1) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(b), **6**
- F482** Words in reg. 71(1)(a)(iii) substituted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **9(a)**
- F483** Words in reg. 71(1)(a)(iv) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **15(a)**
- F484** Reg. 71(1)(a)(v) and word inserted (10.4.1989) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 13(a)** (with reg. 28)
- F485** Words in reg. 71(1)(a)(v) added (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 17**
- F486** Reg. 71(1)(a)(vi) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **17(2)**
- F487** Words in reg. 71(1)(b) omitted (10.4.1989) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 5** (with reg. 28)
- F488** Words in reg. 71(1)(b) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 8**
- F489** Words in reg. 71(1)(b) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **17(3)**
- F490** Words in reg. 71(1)(b)(i) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 8(i)**



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- F491** Words in reg. 71(1)(b)(ii) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 8(ii)**
- F492** Words in reg. 71(1)(b)(iii) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 8(iii)**
- F493** Words in reg. 71(1)(c) substituted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), reg. 1(1), **Sch. 1 para. 4(a)**
- F494** Words in reg. 71(1)(c)(i) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **17(4)**
- F495** Words in reg. 71(1)(c) omitted (1.4.1993) by virtue of [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), reg. 1(1), **Sch. 1 para. 4(b)**
- F496** Reg. 71(1)(d) added (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **25(b)**
- F497** Words in reg. 71(1)(d)(ii) substituted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **9(b)**
- F498** Reg. 71(1)(d)(iii) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **15(b)**
- F499** Reg. 71(1)(d)(iv) and word inserted (10.4.1989) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 13(b)** (with reg. 28)
- F500** Words in reg. 71(1)(d)(iv) added (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 17**
- F501** Reg. 71(2)(b)-(f) omitted (5.2.1996) by virtue of [The Social Security \(Persons From Abroad\) Miscellaneous Amendments Regulations 1996 \(S.I. 1996/30\)](#), regs. 1(1), **8(4)** (with reg. 12)
- F502** Reg. 71(3) added (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **25(c)**

#### Modifications etc. (not altering text)

- C13** Reg. 71(1)(a)(i) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**
- C14** Reg. 71(1)(a)(ii) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(2)**
- C15** Reg. 71(1)(b)(i) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**
- C16** Reg. 71(1)(b)(ii)(iii) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(2)**
- C17** Reg. 71(1)(c)(i) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**
- C18** Reg. 71(1)(c)(ii) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(2)**
- C19** Reg. 71(1)(d) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**
- C20** Reg. 71(1)(d)(i) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(2)**

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### Commencement Information

**I71** Reg. 71 in force at 11.4.1988, see reg. 1

### Assessment of income and capital in urgent cases

**72.**—(1) The claimant's income shall be calculated in accordance with Part V subject to the following modifications—

- <sup>F503</sup>(a) any income, other than a payment of income [<sup>F504</sup>or income in kind] made under the Macfarlane Trust<sup>F505</sup>, the Macfarlane (Special Payments) Trust<sup>F506</sup>, the Macfarlane (Special Payments) (No. 2) Trust<sup>F507</sup>, the Fund<sup>F508</sup>, the Eileen Trust <sup>F509</sup>] or <sup>F509</sup>the Independent Living Funds<sup>F510</sup> or income to which [<sup>F511</sup>paragraph 5, 39(2), (3) or (4),] 40, <sup>F512</sup>or 42] of Schedule 9 (disregard of income other than earnings) applies, possessed or treated as possessed by him shall be taken into account in full notwithstanding any provision in that Part disregarding the whole or any part of that income;
- (b) any income to which regulation 53 (calculation of tariff income from capital) applies shall be disregarded;
- (c) income treated as capital by virtue of [<sup>F513</sup>regulation 48(1), (2), (3) and (9)] (income treated as capital) shall be taken into account as income;
- (d) in a case to which paragraph (2) (b) of regulation 70 (urgent cases) applies, any income to which regulation 42 (3) (notional income) applies shall be disregarded;
- <sup>F514</sup>(e) .....

(2) The claimant's capital calculated in accordance with Part V, but including any capital referred to in paragraphs 3 and, to the extent that such assets as are referred to in paragraph 6 consist of liquid assets, 6 [<sup>F515</sup>and, except to the extent that the arrears referred to in paragraph 7 consist of arrears of housing benefit payable under Part II of the Act or Part II of the Social Security and Housing Benefits Act 1982, 7, 9(b), 19, 30 and 32 of Schedule 10] (capital to be disregarded) shall be taken into account in full and the amount of income support which would, but for this paragraph be payable under this regulation, shall be payable only to the extent that it exceeds the amount of that capital.

### Textual Amendments

- F503** Reg. 72(1)(a) substituted (9.6.1988) by [The Family Credit and Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/999\)](#), regs. 1(1), **6**
- F504** Words in reg. 72(1)(a) inserted (11.5.1991) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1991 \(S.I. 1991/1175\)](#), regs. 1(1), **5(6)(a)**
- F505** Words in reg. 72(1) inserted (31.1.1990) by [The Income-related Benefits Schemes Amendment Regulations 1990 \(S.I. 1990/127\)](#), regs. 1(1), **3(3)(d)**
- F506** Words in reg. 72(1)(a) inserted (11.5.1991) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1991 \(S.I. 1991/1175\)](#), regs. 1(1), **5(6)(b)**
- F507** Words in reg. 72(1)(a) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(6)**
- F508** Words in reg. 72(1)(a) inserted (14.5.1993) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1993 \(S.I. 1993/1249\)](#), regs. 1(1)(a), **4(3)(d)**
- F509** Words in reg. 72(1)(a) substituted (22.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/963\)](#), regs. 1, **2(3)(4)**
- F510** Words in reg. 72(1)(a) inserted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **15(a)**

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- F511** Words in reg. 72(1)(a) substituted (11.5.1991) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1991 \(S.I. 1991/1175\)](#), regs. 1(1), **5(6)(c)**
- F512** Words in reg. 72(1)(a) substituted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **23** (with reg. 1(2))
- F513** Words in reg. 72(1)(c) substituted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **15(b)**
- F514** Reg. 72(1)(e) omitted (9.10.1989) by virtue of [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **17**
- F515** Words in reg. 72(2) substituted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **15(c)**

#### Commencement Information

- I72** Reg. 72 in force at 11.4.1988, see reg. 1

## <sup>F516</sup>PART VII

### CALCULATION OF INCOME SUPPORT FOR PART-WEEKS

#### Textual Amendments

- F516** Pt. 7 inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **27**

#### Amount of income support payable

**73.**—(1) Subject to regulations 75 (modifications in income) and 76 (reduction in certain cases), where a claimant is entitled to income support for a period (referred to in this Part as a part-week) to which subsection (1A) of section 21 of the Act (amount etc. of income-related benefit) applies, the amount of income support payable shall, except where paragraph (2) applies, be calculated in accordance with the following formulae—

- (a) if the claimant has no income,

$$N \times A7;$$

- (b) if the claimant has income,

$$(N \times (AI)7)B.$$

(2) Subject to regulations 75 and 76, in the case of a claimant to whom regulation 19<sup>F517</sup> ... (persons in residential care or nursing homes<sup>F517</sup> ...) applies, where the weekly charge for the accommodation is due to be paid during a part-week to which regulation 74(1)(a) or (b) applies, the amount of income support payable shall be calculated in accordance with the following formulae—

- (a) if the claimant has no income, A;

- (b) if the claimant has income,  $(A - I) - B$ .

- (3) In this Regulation—

“A”, Subject to paragraph (4), means the claimant’s weekly applicable amount in the relevant week;

“B” means the amount of any income support, unemployment benefit, <sup>F518</sup>maternity allowance, <sup>F519</sup>short-term or long-term incapacity benefit], or severe disablement allowance payable in respect of any day in the part-week;

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“I” means his weekly income in the relevant week less B;

“N” means the number of days in the part-week;

“relevant week” means the period of 7 days determined in accordance with regulation 74.

- (4) In a case to which paragraph (2) applies, a claimant’s weekly applicable amount shall be—
- (a) where the weekly charge for the accommodation includes all meals, the aggregate of the following amounts—
- (i) the weekly charge for the accommodation determined in accordance with paragraph 1(1)(a) of Schedule 4 <sup>F520</sup> ...; and
- (ii) the amount calculated in accordance with the formula—
- $$(N \times P)7 + (N \times H)7;$$
- (b) where the weekly charge for the accommodation does not include all meals, the aggregate of the following amounts:
- (i) the weekly charge for the accommodation determined in accordance with paragraph 1(1)(a) of Schedule 4 <sup>F520</sup> ... less M; and
- (ii) the amount calculated in accordance with the formula—
- $$(N \times M)7 + (N \times P)7 + (N \times H)7$$

- (5) In paragraph (4)—

“H” means the weekly amount determined in accordance with paragraph 1(1)(c) of Schedule 4 <sup>F521</sup> ...;

“M” means the amount of the increase for meals calculated on a weekly basis in accordance with paragraph 2 of Schedule 4 <sup>F521</sup> ...;

“P” means the weekly amount for personal expenses determined in accordance with paragraph 13 of Schedule 4 <sup>F522</sup> ....

#### Textual Amendments

- F517** Words in reg. 73(2) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 9(a)**
- F518** Words in reg. 73(3) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **17**
- F519** Words in reg. 73(3) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **12** (with reg. 1(4))
- F520** Words in reg. 73(4) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 9(b)**
- F521** Words in reg. 73(5) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 9(b)**
- F522** Words in reg. 73(5) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 9(c)**

## Relevant week

74.—(1) Where the part-week—

- (a) is the whole period for which income support is payable or occurs at the beginning of the claim, the relevant week is the period of 7 days ending on the last day of that part-week; or
- (b) occurs at the end of the claim, the relevant week is the period of 7 days beginning on the first day of that part-week.

(2) Where during the currency of a claim the claimant makes a claim for a relevant social security benefit within the meaning of paragraph 4 of Schedule 7 to the Social Security (Claims and Payments) Regulations 1987 and as a result his benefit week changes, for the purpose of calculating the amount of income support payable—

- (a) for the part-week beginning on the day after his last complete benefit week before the date from which he makes a claim for the relevant social security benefit and ending immediately before that date, the relevant week is the period of 7 days beginning on the day after his last complete benefit week (the first relevant week);
- (b) for the part-week beginning on the date from which he makes a claim for the relevant social security benefit and ending immediately before the start of his next benefit week after the date of that claim, the relevant week is the period of 7 days ending immediately before the start of his next benefit week (the second relevant week).

(3) Where during the currency of a claim the claimant's benefit week changes at the direction of the Secretary of State under paragraph 3 of Schedule 7 to the Social Security (Claims and Payments) Regulations 1987, for the purpose of calculating the amount of income Support payable for the part-week beginning on the day after his last complete benefit week before the change and ending immediately before the change, the relevant week is the period of 7 days beginning On the day after the last complete benefit week.

## Modifications in the calculation of income

75. For the purposes of regulation 73 (amount of income support payable for part-weeks), a claimant's income and the income of any person which the claimant is treated as possessing under section 22(5) of the Act or regulation 23(3) shall be calculated in accordance with Part V and, where applicable, VI subject to the following modifications—

- (a) any income which is due to be paid in the relevant week shall be treated as paid on the first day of that week;
- (b) any income support, unemployment benefit, [<sup>F523</sup>maternity allowance,]<sup>F524</sup>short-term or long-term incapacity benefit], or severe disablement allowance <sup>F525</sup>... payable in the relevant week but not in respect of any day in the part-week shall be disregarded;
- (c) where the part-week occurs at the end of the claim, any income or any change in the amount of income of the same kind which is first payable within the relevant week but not on any day in the part-week shall be disregarded;
- (d) where the part-week occurs immediately after a period in which a person was treated as engaged in remunerative work under regulation 5(5) (persons treated as engaged in remunerative work) any earnings which are taken into account for the purposes of determining that period shall be disregarded;
- (e) where regulation 74(2) (relevant week) applies, any payment of income which—
  - (i) is the final payment in a series of payments of the same kind or, if there has been an interruption in such payments, the last one before the interruption;
  - (ii) is payable in respect of a period not exceeding a week; and
  - (iii) is due to be paid on a day which falls within both the first and second relevant weeks,

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shall be taken into account in either the first relevant week or, if it is impracticable to take it into account in that week, in the second relevant week; but this paragraph shall not apply to a payment of income support, unemployment benefit, [<sup>F526</sup>maternity allowance,]<sup>F527</sup> short-term or long-term incapacity benefit] or severe disablement allowance<sup>F528</sup> ...;

- (f) where regulation 74(2) applies, any payment of income which—
- (i) is the final payment in a series of payments of the same kind or, if there has been an interruption in such payments, the last one before the interruption;
  - (ii) is payable in respect of a period exceeding a week but not exceeding 2 weeks; and
  - (iii) is due to be paid on a day which falls within both the first and second relevant weeks, shall be disregarded; but this sub-paragraph shall not apply to a payment of income support, unemployment benefit, [<sup>F529</sup>maternity allowance,]<sup>F527</sup> short-term or long-term incapacity benefit], or severe disablement allowance<sup>F528</sup> ...;
- (g) where regulation 74(2) applies, if the weekly amount of any income which is due to be paid on a day which falls within both the first and second relevant weeks is more than the weekly amount of income of the same kind due to be paid in the last complete benefit week, the excess shall be disregarded;
- (h) where only part of the weekly amount of income is taken into account in the relevant week, the balance shall be disregarded.

#### Textual Amendments

- F523** Words in reg. 75(b) inserted (12.9.1988) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), regs. 1(1)(b), 17
- F524** Words in reg. 75(b) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **13** (with reg. 1(4))
- F525** Words in reg. 75(b) omitted (13.4.1995) by virtue of [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **13** (with reg. 1(4))
- F526** Words in reg. 75(e) inserted (12.9.1988) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), regs. 1(1)(b), 17
- F527** Words in reg. 75(e)(f) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **13** (with reg. 1(4))
- F528** Words in reg. 75(e)(f) omitted (13.4.1995) by virtue of [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **13** (with reg. 1(4))
- F529** Words in reg. 75(f) inserted (12.9.1988) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), regs. 1(1)(b), 17

#### Reduction in certain cases

76. There shall be deducted from the amount of income support which would, but for this regulation, be payable for a part-week—

- (a) in the case of a claimant to whom regulation 22(1) or (2) (reductions in weekly applicable amounts in certain cases of unemployment benefit disqualification) applies, the proportion of the relevant amount specified therein appropriate to the number of days in the part-week;
- (b) where regulation 75(f) (modifications in the calculation of income) applies, one-half of the amount disregarded under regulation 75(f) less the weekly amount of any disregard under Schedule 8 or 9 appropriate to that payment.

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### **Modification of section 23(5) of the Act**

77. Where income support is payable for a part-week, section 23(5) of the Act (trade disputes) shall have effect as if the following paragraph were substituted for paragraph (b)—

“(b) any payment by way of income support for a part-week which apart from this paragraph would be made to him, or to a person whose applicable amount is aggregated with his—

(i) shall not be made if the payment for that part-week is equal to or less than the proportion of the relevant sum appropriate to the number of days in the part-week; or

(ii) if it is more than that proportion, shall be made at a rate equal to the difference.”]

Secretary of State for Social Services

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## SCHEDULE 1

Regulation 8

### PERSONS NOT REQUIRED TO BE AVAILABLE FOR EMPLOYMENT

#### Lone parents

1. A person who is a lone parent and responsible for a child who is a member of his household.

#### Commencement Information

**I73** Sch. 1 para. 1 in force at 11.4.1988, see reg. 1

#### Single persons looking after foster children

2. A single claimant or a lone parent with whom a child [<sup>F530</sup> is placed] by a local authority or voluntary organisation within the meaning of the [<sup>F530</sup> Children Act 1989] or, in Scotland, the Social Work (Scotland) Act 1968 <sup>F531</sup>.

#### Textual Amendments

**F530** Words in Sch. 1 para. 2 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), Sch. para. 6

**F531** 1968 c. 49.

#### Commencement Information

**I74** Sch. 1 para. 2 in force at 11.4.1988, see [reg. 1](#)

#### Persons temporarily looking after another person

3. A person who is—
  - (a) looking after a child because the parent of that child or the person who usually looks after him is ill or is temporarily absent from his home; or
  - (b) looking after a member of the family who is temporarily ill.

#### Commencement Information

**I75** Sch. 1 para. 3 in force at 11.4.1988, see reg. 1

#### Persons caring for another person

<sup>F532</sup>4.—(1) A person (the carer)—

- (a) who is regularly and substantially engaged in caring for another person if—
  - (i) the person being cared for is in receipt of attendance allowance under section 35 of the Social Security Act [<sup>F533</sup> or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 37ZB(3) of the Social Security Act]; or



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- (ii) the person being cared for has claimed attendance allowance under that section but only for the period up to the date of determination of that claim, or the period of 26 weeks from the date of that claim, whichever date is the earlier; or
  - <sup>F534</sup>(iii) the person being cared for has claimed entitlement to a disability living allowance but only for the period up to the date of determination of that claim, or the period of 26 weeks from the date of that claim, whichever date is the earlier; or]
  - (b) who is engaged in caring for another person and who is in receipt of an invalid care allowance under section 37 of the Social Security Act.
- (2) If paragraph (1) ceases to apply to the carer, he shall not be required to be available for employment for a period of eight weeks from the date upon which that paragraph ceased to apply to him.

#### Textual Amendments

- F532** Sch. 1 para. 4 & 4A substituted for Sch. 1 para. 4 (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **13(a)** (with reg. 1(2))
- F533** Words in Sch. 1 para. 4(1)(a)(i) inserted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(3)(a)** (with reg. 1(2))
- F534** Sch. 1 para. 4(1)(a)(iii) added (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(3)(b)** (with reg. 1(2))

#### Commencement Information

- I76** Sch. 1 para. 4 in force at 11.4.1988, see reg. 1

**4A.** A person who, had he previously made a claim for income support, would not have been required to be available for employment by reason of subparagraph (1) of paragraph 4 for a period of 8 weeks from the date upon which that sub-paragraph would have ceased to apply to him.]

#### Textual Amendments

- F532** Sch. 1 para. 4 & 4A substituted for Sch. 1 para. 4 (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **13(a)** (with reg. 1(2))

### Persons incapable of work

- <sup>F535</sup>5. A person who—
  - (a) is incapable of work in accordance with the provisions of Part XIIA of the Contributions and Benefits Act and the regulations made thereunder (incapacity for work); or
  - (aa) <sup>F536</sup>is treated as incapable of work by virtue of regulations made under section 171D of the Contributions and Benefits Act 1992 (incapacity for work: persons to be treated as incapable or capable of work); or]
  - (b) is treated as capable of work by virtue of regulations made under section 171E(1) of that Act (disqualification etc); or
  - (c) is entitled to statutory sick pay.]

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#### Textual Amendments

- F535** Sch. 1 para. 5 substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **14** (with reg. 1(4))
- F536** Sch. 1 para. 5(aa) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(7)** (with reg. 8)

#### Disabled workers

[<sup>F537</sup>6. A person to whom regulation 6(a) (persons not treated as engaged in remunerative work) applies.]

#### Textual Amendments

- F537** Sch. 1 para. 6 substituted (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **13(b)** (with regs. 1(2), 22-24)

#### Commencement Information

- I77** Sch. 1 para. 6 in force at 11.4.1988, see reg. 1

#### [<sup>F538</sup>Persons in employment living in residential care homes, nursing homes or residential accommodation

**6A.** A person to whom regulation 6(g) applies.]

#### Textual Amendments

- F538** Sch. 1 para. 6A inserted (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **13(e)** (with reg. 1(2))

#### Disabled students

[<sup>F539</sup>7. A person who is a student and—

- (a) whose applicable amount includes the disability premium or severe disability premium; or
- (b) who has satisfied the provisions of paragraph 5 for a continuous period of not less than 196 days, and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period.]

#### Textual Amendments

- F539** Sch. 1 para. 7 substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **15** (with reg. 1(4))

[<sup>F540</sup>7A.—(1) A person who is a student who—

- (a) immediately before 1st September 1990 was in receipt of income support by virtue of paragraph 7 as then in force; or

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- (b) on or after that date makes a claim for income support and at a time during the period of 18 months immediately preceding the date of that claim was in receipt of income support either by virtue of that paragraph or regulation 13 (2) (b),

but this paragraph shall cease to apply where the person has ceased to be in receipt of income support for a continuous period of 18 months or more.]

#### Textual Amendments

**F540** Sch. 1 para. 7 & 7A substituted for Sch. 1 para. 7 (1.9.1990) by [The Social Security Benefits \(Student Loans and Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/1549\)](#), regs. 1(1)(a), **5(8)(a)** (with reg. 7(1))

**[<sup>F541</sup>7B.—**(1) A person who is a student in respect of whom—

- (a) a supplementary requirement has been determined under paragraph 15 of Schedule 2 to the Education (Mandatory Awards) Regulations 1987 or the Education (Mandatory Awards) Regulations 1988, paragraph 12 of Schedule 2 to the Education (Mandatory Awards) Regulations 1989 or paragraph 12 of Schedule 2 to the Education (Mandatory Awards) Regulations 1990; or
- (b) an allowance or, as the case may be, bursary has been granted which includes a sum under paragraph (1)(d) of regulation 6 of the Students' Allowances (Scotland) Regulations 1987 or, as the case may be, the Education Authority Bursaries (Scotland) Regulations 1988 in respect of expenses incurred; or
- (c) a payment has been made under section 2 of the Education Act 1962; [<sup>F542</sup>or
- (d) a supplementary requirement has been determined under paragraph 15 of Schedule 7 to the Students Awards Regulations (Northern Ireland) 1987, paragraph 15 of Schedule 7 to the Students Awards Regulations (Northern Ireland) 1988, paragraph 12 of Schedule 7 to the Students Awards Regulations (Northern Ireland) 1990 or paragraph 12 of Schedule 7 to the Students Awards (No. 2) Regulations (Northern Ireland) 1990 or a payment has been made under article 50(3) of the Education and Libraries (Northern Ireland) Order 1986;]

on account of his disability by reason of deafness.

(2) A student to whom sub-paragraph (1) applies shall be treated as satisfying that sub-paragraph from the date on which he made a request for the supplementary requirement, allowance, bursary or payment, as the case may be, or 1st September 1990, whichever is later.]

#### Textual Amendments

**F541** Sch. 1 para. 7B inserted (1.9.1990) by [The Income-Related Benefits Amendment Regulations 1990 \(S.I. 1990/1657\)](#), regs. 1, **5(3)**

**F542** Sch. 1 para. 7B(1)(d) and word inserted (13.3.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(a), **10** (with reg. 1(2))

### Blind persons

**8.** A person who is a blind person registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948 <sup>F543</sup> (welfare services) or, in Scotland, who has been certified as blind in a register maintained by or on behalf of a regional or islands council, but a person who has ceased to be so registered on regaining his eyesight shall nevertheless be treated as so registered for a period of 28 weeks following the date on which he ceased to be so registered.

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### Textual Amendments

**F543** 1948 c. 29; section 29 was amended by section 1(2) of the [National Assistance \(Amendment\) Act 1959](#) (c. 30); the [Mental Health \(Scotland\) Act 1960](#) (c. 61), [sections 113](#) and 114 and Schedule 4; the [Local Government Act 1972](#) (c. 70), [Schedule 23](#), paragraph 2; the [Employment and Training Act 1973](#) (c. 50), [Schedule 3](#), paragraph 3; the [National Health Service Act 1977](#) (c. 49), [Schedule 15](#), paragraph 6; and the [Health and Social Services and Social Security Adjudication Act 1983](#) (c. 41), [Schedule 10](#), Part I.

### Commencement Information

**I78** Sch. 1 para. 8 in force at 11.4.1988, see reg. 1

## Pregnancy

9. A woman who—

- (a) is incapable of work by reason of pregnancy; or
- (b) is or has been pregnant but only for the period commencing 11 weeks before her expected week of confinement and ending seven weeks after the date on which her pregnancy ends.

### Commencement Information

**I79** Sch. 1 para. 9 in force at 11.4.1988, see reg. 1

## Persons in education

10. A person to whom any provision of regulation 13(2)(a) to (e) (persons receiving relevant education who are parents, persons severely handicapped, orphans and persons estranged from their parents or guardian) applies.

### Commencement Information

**I80** Sch. 1 para. 10 in force at 11.4.1988, see reg. 1

## Training allowances

11. A person who is in receipt of a training allowance.

### Commencement Information

**I81** Sch. 1 para. 11 in force at 11.4.1988, see reg. 1

## Open University students

12. A person who is following an Open University course and is attending, as a requirement of that course, a residential course.

### Commencement Information

**I82** Sch. 1 para. 12 in force at 11.4.1988, see reg. 1

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### Persons within 10 years of pensionable age

13. A person [<sup>F544</sup>aged not less than 50 who]—
- (a) has not been in remunerative work during the previous 10 years; and
  - (b) has no prospect of future employment in remunerative work; and
  - (c) during that period has not been required to be available for employment in accordance with section 20(3)(d)(i) of the Act (conditions of entitlement to income support), or would not have been so required had a claim to income support been made by or in respect of him.

#### Textual Amendments

**F544** Words in Sch. 1 para. 13 substituted (10.4.1989) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(b), **16(b)**

#### Commencement Information

**I83** Sch. 1 para. 13 in force at 11.4.1988, see reg. 1

### Persons aged 60

14. A person aged not less than 60.

#### Commencement Information

**I84** Sch. 1 para. 14 in force at 11.4.1988, see reg. 1

### Allowances under the Job Release Act 1977

- <sup>F545</sup>15. ....

#### Textual Amendments

**F545** Sch. 1 para. 15 omitted (10.4.1989) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(c), **18**

#### Commencement Information

**I85** Sch. 1 para. 15 in force at 11.4.1988, see reg. 1

### Refugees

16. <sup>F546</sup>... A person who is a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 <sup>F547</sup> as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967 <sup>F548</sup> and who—
- (a) is attending for more than 15 hours a week a course for the purpose of learning English so that he may obtain employment; and
  - (b) on the date on which that course commenced, had been in Great Britain for not more than 12 months,
- but only for a period not exceeding nine months.

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#### Textual Amendments

**F546** Words in Sch. 1 para. 16 omitted (1.9.1990) by virtue of [The Social Security Benefits \(Student Loans and Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/1549\)](#), regs. 1(1)(a), **5(8)(b)** (with reg. 7(1))

**F547** Cmnd. 9171.

**F548** Cmnd. 3906.

#### Commencement Information

**I86** Sch. 1 para. 16 in force at 11.4.1988, see reg. 1

### Persons required to attend court

**17.** A person who is required to attend court <sup>F549</sup>... as a justice of the peace, a party to any proceedings, a witness or a juror.

#### Textual Amendments

**F549** Words in Sch. 1 para. 17 omitted (7.10.1991) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **13(d)** (with reg. 1(2))

#### Commencement Information

**I87** Sch. 1 para. 17 in force at 11.4.1988, see reg. 1

### Discharged prisoners

**18.** A person who has been discharged from detention in a prison, remand centre or youth custody institution but only for the period of seven days commencing with the date of his discharge.

#### Commencement Information

**I88** Sch. 1 para. 18 in force at 11.4.1988, see reg. 1

### Persons affected by a trade dispute

**19.** A person to whom section 23 of the Act (trade disputes) applies or in respect of whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by [<sup>F550</sup>section 23A(b) of the Act (effect of return to work).]

#### Textual Amendments

**F550** Words in Sch. 1 para. 19 substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **28**

#### Commencement Information

**I89** Sch. 1 para. 19 in force at 11.4.1988, see reg. 1

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## Persons from abroad

**20.** A person to whom regulation 70(3) (applicable amount of certain persons from abroad) applies.

### Commencement Information

**I90** Sch. 1 para. 20 in force at 11.4.1988, see reg. 1

## Persons in custody

**21.** A person remanded in, or committed in, custody for trial or for sentencing.

### Commencement Information

**I91** Sch. 1 para. 21 in force at 11.4.1988, see reg. 1

## [<sup>F551</sup>Member of couple looking after children while other member temporarily abroad

**22.** A person who is a member of a couple and who is treated as responsible for a child who is a member of his household where the other member of that couple is temporarily [<sup>F552</sup>not present in the United Kingdom].]

### Textual Amendments

**F551** Sch. 1 para. 22 inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), **7**

**F552** Words in Sch. 1 para. 22 substituted (10.4.1989) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(b), **16(c)**

## [<sup>F553</sup>Persons taking a child or young person abroad for treatment

**23.** A person who is temporarily absent from Great Britain in the circumstances specified in regulation 4(3) (temporary absence abroad for the treatment of the child or young person).]

### Textual Amendments

**F553** Sch. 1 para. 23 added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **15**

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## [<sup>F554</sup>SCHEDULE 1A

Regulation 13A

### CIRCUMSTANCES IN WHICH A PERSON AGED 16 OR 17 IS ELIGIBLE FOR INCOME SUPPORT

#### Textual Amendments

**F554** Sch. 1A inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), 8, [Sch.](#)

## PART I

### PERSONS ELIGIBLE UNTIL 18

1. A person who is not required to be available for employment under any of the following paragraphs of Schedule 1 (persons not required to be available for employment)–

paragraph 1	(lone parents)
paragraph 2	(single persons looking after foster children)
paragraph 3	(persons temporarily looking after another person)
paragraph 4	(persons caring for another person)
[ <sup>F555</sup> paragraph 7	(disabled students)]
[ <sup>F555</sup> paragraph 7A]	
[ <sup>F555</sup> paragraph 7B]	
paragraph 8	(blind persons)
paragraph 9	(pregnancy)
paragraph 10	(persons in education)
paragraph 11	(training allowances)
paragraph 16	(refugees)
paragraph 20	(persons from abroad).
paragraph 22	(member of couple looking after children while other member temporarily abroad).
[ <sup>F556</sup> paragraph 23	(persons taking a child or young person abroad for treatment).]

#### Textual Amendments

**F555** Sch. 1A para. 1 entries inserted (5.8.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(a), [14](#) (with reg. 1(2))

**F556** Words in Sch. 1A para. 1 added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), [16](#)



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2. A person who is incapable of work and training under the youth training scheme, by reason of some disease or bodily or mental disablement if, in the opinion of a medical practitioner, that incapacity is unlikely to end within 12 months because of the severity of that disease or disablement.

3. A person who is a member of a couple and is treated as responsible for a child who is a member of his household.

4. A person who is temporarily laid off employment and is available to be re-engaged in that employment.

## PART II

### PERSONS ELIGIBLE UNTIL THE RELEVANT DATE DETERMINED UNDER REGULATION 13A(3)(b)

5. A registered person who is a member of a married couple where the other member of that couple is aged not less than 18 or is a registered person or a person to whom Part I of this Schedule applies.

6. A registered person who has no parent nor any person acting in the place of his parents.

7. A registered person who—

(a) is not living with his parents nor any person acting in the place of his parents; and

(b) [<sup>F557</sup>was being looked after by a local authority pursuant to a relevant enactment who placed him with some person other than a close relative of his], or was in custody in any institution to which the Prison Act 1952 applied or under the Criminal Procedure (Scotland) Act 1975 immediately before he attained the age of 16.

#### Textual Amendments

**F557** Words in Sch. 1A para. 7(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), Sch. para. 7(a) (with [Sch. para. 11](#))

8. A registered person who is in accommodation which is other than his parental home, [<sup>F558</sup>and which is other than the home] of a person acting in the place of his parents, who entered that accommodation—

(a) as part of a programme of rehabilitation or resettlement, that programme being under the supervision of the probation service or a local authority; or

(b) in order to avoid physical or sexual abuse; or

(c) because of a mental or physical handicap or illness and needs such accommodation because of his handicap or illness.

#### Textual Amendments

**F558** Words in Sch. 1A para. 8 substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), [11\(a\)](#) (with [reg. 1\(2\)](#))

9. A registered person who is living away from his parents and any person who is acting in the place of his parents in a case where his parents are or, as the case may be, that person is, unable financially to support him and his parents are, or that person is—

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- (a) chronically sick or mentally or physically disabled; or
- (b) detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
- (c) prohibited from entering or re-entering Great Britain.

[<sup>F559</sup>9A. A registered person who of necessity has to live away from his parents [<sup>F560</sup>and any person] acting in the place of his parents because—

- (a) he is estranged from [<sup>F560</sup>his parents and that person]; or
- (b) he is in physical or moral danger; or
- (c) there is a serious risk to his physical or mental health.]

#### Textual Amendments

**F559** Sch. 1A para. 9A inserted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **10**

**F560** Words in Sch. 1A substituted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **11(b)** (with reg. 1(2))

**10.** In this Schedule—

- [<sup>F561</sup>(a) any reference to a person acting in place of a registered person’s parents includes a reference—
- (i) except in a case to which head (ii) applies, to any person with parental responsibility for the child, and for this purpose “parental responsibility” bears the meaning it has in the Children Act 1989 by virtue of section 3 of that Act; or
  - (ii) where the person is being looked after by a local authority or voluntary organisation who place him with a family, a relative of his, or some other suitable person, the person with whom the person is placed, whether or not any payment is made to him in connection with the placement; and]
- (b) “chronically sick or mentally or physically disabled” has the same meaning as in regulation 13(3)(b) (circumstances in which persons in relevant education are to be entitled to income support).]

#### Textual Amendments

**F561** Sch. 1A para. 10(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), Sch. para. 7(b) (with [Sch. para. 11](#))

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SCHEDULE 2

Regulations 17<sup>[F562(1)]</sup> and 18

APPLICABLE AMOUNTS

**Textual Amendments**

**F562** Word in Sch. 2 inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **19**

Regulations 17<sup>[F562(1)]</sup>(a) and (b) and 18(a) (b) and (c)

**PART I**

personal allowances

1. The weekly amounts specified in column (2) below in respect of each person or couple specified in column (1) shall be the weekly amounts specified for the purposes of regulations 17<sup>[F562(1)]</sup>(a) and <sup>[F563]</sup>18(1)(a) and (b) (applicable amounts and polygamous marriages).

<b>Column (1)</b> <b>Person or Couple</b>	<b>Column (2)</b> <b>Amount</b>
<sup>[F564]</sup> 1) Single claimant aged—	
(a) (a) except where head (b) or (c) of this sub-paragraph applies, less than 18;	(a) (a) <sup>[F565]</sup> £28.85;
(b) (b) less than 18 who falls within any of the circumstances specified in Part II of Schedule 1A or who, had he been a registered person, would fall within any of those circumstances, and who—	(b) (b) <sup>[F565]</sup> £37.90;
(i) is eligible for income support under regulation 13A; or	
(ii) is the subject of a direction under section <sup>[F566]</sup> 125(1) of the Contributions and Benefits Act;	
(c) (c) less than 18 who satisfies the condition in paragraph 11(a);	(c) (c) <sup>[F565]</sup> £37.90;
(d) (d) not less than 18 but less than 25;	(d) (d) <sup>[F565]</sup> £37.90;
(e) (e) not less than 25.	(e) (e) <sup>[F565]</sup> £47.90;

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(2) Lone parent aged—

- |     |   |     |                                |
|-----|---|-----|--------------------------------|
| (a) | (a) except where head (b) or (c) of this sub-paragraph applies, less than 18;   | (a) | (a) [ <sup>F565</sup> £28.85;] |
| (b) | (b) less than 18 who falls within any of the circumstances specified in Part II of Schedule 1A or who, had he been a registered person, would fall within any of those circumstances and who—<br>(i) is eligible for income support under regulation 13A; or<br>(ii) is the subject of a direction under section [ <sup>F566</sup> 125(1) of the Contributions and Benefits Act;] | (b) | (b) [ <sup>F565</sup> £37.90;] |
| (c) | (c) less than 18 who satisfies the condition in paragraph 11(a);  | (c) | (c) [ <sup>F565</sup> £37.90;] |
| (d) | (d) not less than 18.   | (d) | (d) [ <sup>F565</sup> £47.90;] |

[<sup>F567</sup>(3) Couple—

- |     |  |     |                                |
|-----|--|-----|--------------------------------|
| (a) | (a) where both members are persons aged less than 18 | (a) | (a) [ <sup>F565</sup> £57.20;] |
|-----|--|-----|--------------------------------|
- (i) at least one of them is treated as responsible for a child; or
- (ii) had they not been members of a couple, each would be eligible for income support under regulation 13A (circumstances in which a person aged 16 or 17 is eligible for income support); or
- (iii) they are married and each member is either a registered person or a person to whom Part I of Schedule 1A applies; or
- (iv) there is a direction under section [<sup>F568</sup>125(1) of the Contributions and Benefits Act] (income support to avoid

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severe hardship) in respect of each member; or

- (v) there is a direction under section [F568]125(1) of the Contributions and Benefits Act] in respect of one of them and the other is eligible for income support under regulation 13A;

- [F569](aa) [F569](aa) where both members are aged less than 18 and sub-paragraph (3)(a) does not apply but one member of the couple [F570]falls within any of the circumstances specified in Part II of Schedule 1A or who, had he been a registered person, would fall within any of those circumstances and that member]–
- (aa) (aa) [F565]£37.90;]

(i) is eligible for income support under regulation 13A; or

(ii) is the subject of a direction under section [F568]125(1) of the Contributions and Benefits Act].]

- (b) (b) where both members are aged less than 18 and sub-paragraph (3)(a) [F571]or (aa)] above does not apply but one member of the couple–
- (b) (b) [F565]£28.85;]

(i) is eligible for income support under regulation 13A; or

(ii) is the subject of a direction under section [F572]125(1);

- (c) (c) where both members are aged not less than 18;
- (c) (c) [F565]£75.20;]

- (d) (d) where one member is aged not less than 18 and the other member is a person under 18 who–
- (d) (d) [F565]£75.20;]

(i) is eligible for income support under regulation 13A; or

(ii) is the subject of a direction under section [F572]125(1);

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- (e) (e) where one member is aged not less than 18 but less than 25 and the other member is a person under 18 who— (e) (e) [<sup>F565</sup>£37.90;]
- (i) is not eligible for income support under regulation 13A; or
- (ii) is not the subject of a direction under section [<sup>F572</sup>125(1)];
- (f) (f) where one member is aged not less than 25 and the other member is a person under 18 who— (f) (f) [<sup>F565</sup>£47.90;]
- (i) is not eligible for income support under regulation 13A; and
- (ii) is not the subject of a direction under section [<sup>F572</sup>125(1)].]

### Textual Amendments

- F562** Word in Sch. 2 inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **19**
- F563** Words in Sch. 2 para. 1 substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **19(a)**
- F564** Sch. 2 para. 1(1)(2) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment No. 2 Regulations 1990 \(S.I. 1990/1168\)](#), regs. 1(1)(a), **2**
- F565** Sch. 2 Pt. 1 sums substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996, \(S.I. 1996/599\)](#) art. 18(3), Sch. 4
- F566** Words in Sch. 2, Pt. 1, para 1(1)(2) substituted (coming into force in accordance with art. 1(2)(f) of the amending S.I.) by [The Social Security Benefits Up Rating Order 1994 \(S.I. 1994/542\)](#), art. 16(3), **Sch. 4**
- F567** Sch. 2 para. 1(3) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1228\)](#), regs. 1(1)(b), **9**
- F568** Words in Sch. 2, Pt. 1, para 1(3)(a)(aa) substituted (coming into force in accordance with art. 1(2)(f) of the amending S.I.) by [The Social Security Benefits Up Rating Order 1994 \(S.I. 1994/542\)](#), art. 16(3), **Sch. 4**
- F569** Sch. 2 para. 1(3)(aa) inserted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **11(b)(i)**
- F570** Words in Sch. 2 para. 1(3)(aa) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **6(c)**
- F571** Words in Sch. 2 para. 1(3)(b) inserted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **11(b)(ii)**
- F572** Words in Sch. 2, Pt. 1, para 1(3)(b)(d)-(f) substituted (coming into force in accordance with art. 1(2)(f) of the amending S.I.) by [The Social Security Benefits Up Rating Order 1994 \(S.I. 1994/542\)](#), art. 16(3), **Sch. 4**

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### Commencement Information

**I92** Sch. 2 para. 1 in force at 11.4.1988, see reg. 1

<sup>F573</sup>2. The weekly amounts specified in column (2) below in respect of each person specified in column (1) shall be the weekly amounts specified for the purposes of regulations 17(1)(b) and 18(1)(c).

Column (1) Child or Young Person	Column (2) Amount
Person aged—	
(a) (a) less than 11;	(a) (a) [ <sup>F565</sup> £16.45;]
(b) (b) not less than 11 but less than 16;	(b) (b) [ <sup>F565</sup> £24.10;]
(c) (c) not less than 16 but less than 18;	(c) (c) [ <sup>F565</sup> £28.85;]
(d) (d) not less than 18.	(d) (d) [ <sup>F565</sup> £37.90;]

### Textual Amendments

**F565** Sch. 2 Pt. 1 sums substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by The Social Security Benefits Up-rating Order 1996, (S.I. 1996/599) art. 18(3), Sch. 4

**F573** Sch. 2 para. 2 substituted (1.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(b), **15(b)** (with reg. 1(2))

### Commencement Information

**I93** Sch. 2 para. 2 in force at 11.4.1988, see reg. 1

<sup>F574</sup>2A.—(1) The weekly amount for the purposes of regulation 17(1)(bb) and 18(1)(cc) (residential allowance) in respect of a person who satisfies the conditions specified in sub-paragraph (2) shall be—

- (a) except in a case to which head (b) applies, [<sup>F575</sup>£54.00]; and
- (b) where the home in which the person resides is situated within the area described in Schedule 3C (the Greater London area), [<sup>F575</sup>£60.00].

(2) Subject to sub-paragraphs [<sup>F576</sup>(3), (4) and (4A)], the conditions are—

- (a) the person resides in a residential care home or a nursing home [<sup>F577</sup>or is regarded pursuant to sub-paragraph (4A) as residing in such a home];

[ the person both requires personal care and is provided with it in the home and for this purpose “personal care” means care which includes assistance with bodily functions where such assistance is required;]

<sup>F578</sup>(aa)

- (b) he does not have a preserved right;
- (c) he is aged 16 or over;

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- (d) both the person's accommodation and such meals (if any) as are provided for him are provided on a commercial basis; and
- (e) no part of the weekly charge for accommodation is met by housing benefit.

(3) For the purposes of sub-paragraph (2), but subject to sub-paragraph (4), a person resides in a residential care home where the home in which he resides—

- (a) is registered under Part I of the Registered Homes Act 1984 or is deemed to be so registered by virtue of section 2(3) of the Registered Homes (Amendment) Act 1991 (registration of small homes where application for registration not determined);
- (b) is managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament (other than a social services authority) and provides both board and personal care for the claimant; or
- (c) is in Scotland and is registered under section 61 of the Social Work (Scotland) Act 1968 or is an establishment provided by a housing association registered with Scottish Homes established by the Housing (Scotland) Act 1988 which provides care equivalent to that given in residential accommodation provided under Part IV of the Social Work (Scotland) Act 1968;

and a person resides in a nursing home where the home in which he resides is such a home for the purposes of regulation 19.

(4) A person shall not be regarded as residing in a nursing home for the purposes of sub-paragraph (2) where the home in which he resides is a hospice, and for this purpose "hospice" means a nursing home which—

- (a) if situate in England or Wales, is registered under Part II of the Registered Homes Act 1984, or
- (b) if situate in Scotland, is exempted from the operation of the Nursing Homes Registration (Scotland) Act 1938 by virtue of section 6 of that Act,

[<sup>F579</sup>and whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages].

[<sup>F580</sup>(4A) For the purposes of sub-paragraph (2)(a), where a person's principal place of residence is a residential care home or nursing home, and he is temporarily absent from that home, he shall be regarded as continuing to reside in that home—

- (a) where he is absent because he is a patient, for the first six weeks of any such period of absence, and for this purpose—
  - (i) "patient" has the meaning it has in Schedule 7 by virtue of regulation 21(3), and
  - (ii) periods of absence separated by not more than 28 days shall be treated as a single period of absence equal in duration to all those periods; and
- (b) for the first three weeks of any other period of absence.]

(5) Where—

- (a) a person has been registered under the Registered Homes Act 1984 in respect of premises which have been carried on as a residential care home or, as the case may be, a nursing home, and that person has ceased to carry on such a home; and
- (b) an application for registration under that Act has been made by another person and that application has not been determined or abandoned,

then any question arising for determination under this paragraph shall be determined as if the most recent registration under that Act in respect of those premises continued until the day on which the application is determined or abandoned.]



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### Textual Amendments

- F574** Sch. 2 para. 2A inserted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), regs. 1(1), **2(1)(d)**
- F575** Sch. 2 Pt. 1 para. 2A sums substituted (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up Rating Order 1996, \(S.I. 1996/599\)](#), art. 18(3), Sch. 4
- F576** Words in Sch. 2 para. 2A(2) substituted (31.5.1993) by [The Income Support \(General\) Amendment \(No. 2\) Regulations 1993 \(S.I. 1993/1219\)](#), regs. 1(1), **2(2)(a)** (with reg. 3)
- F577** Words in Sch. 2 para. 2A(2)(a) substituted (31.5.1993) by [The Income Support \(General\) Amendment \(No. 2\) Regulations 1993 \(S.I. 1993/1219\)](#), regs. 1(1), **2(2)(b)** (with reg. 3)
- F578** Sch. 2 para. 2A(2)(aa) inserted (1.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/518\)](#), regs. 1, **5(4)**
- F579** Words in Sch. 2 para. 2A(4) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **18(2)**
- F580** Sch. 2 para. 2A(4A) inserted (31.5.1993) by [The Income Support \(General\) Amendment \(No. 2\) Regulations 1993 \(S.I. 1993/1219\)](#), regs. 1(1), **2(3)** (with reg. 3)

Regulations 17<sup>[F562]</sup>(1)(c) and 18(d)

## PART II

### family premium

3. The weekly amount for the purposes of regulations 17<sup>[F562]</sup>(1)(c) <sup>[F581]</sup>and 18(1)(d) in respect of a family of which at least one member is a child or young person shall be <sup>[F582]</sup>£10.55.]

### Textual Amendments

- F562** Word in Sch. 2 inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **19**
- F581** Words in Sch. 2 para. 3 substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **19(c)**
- F582** Sum in Sch. 2 Pt. II para. 3 substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(4)**

### Commencement Information

- I94** Sch. 2 para. 3 in force at 11.4.1988, see reg. 1

Regulations 17<sup>[F562]</sup>(1)(d) and 18(e)

## PART III

### premiums

4. Except as provided in paragraph 5, the weekly premiums specified in Part IV of this Schedule shall, for the purposes of regulations 17<sup>[F562]</sup>(1)(d) <sup>[F583]</sup>and 18(1)(e), be applicable to a claimant who satisfies the condition specified in paragraphs <sup>[F584]</sup>8 to 14ZA] in respect of that premium.

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#### Textual Amendments

- F562** Word in Sch. 2 inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **19**
- F583** Words in Sch. 2 para. 4 substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **19(c)**
- F584** Words in Sch. 2 para. 4 substituted (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **8(a)** (with reg. 1(2))

#### Commencement Information

- I95** Sch. 2 para. 4 in force at 11.4.1988, see reg. 1

5. Subject to paragraph 6, where a claimant satisfies the conditions in respect of more than one premium in this Part of this Schedule, only one premium shall be applicable to him and, if they are different amounts, the higher or highest amount shall apply.

#### Commencement Information

- I96** Sch. 2 para. 5 in force at 11.4.1988, see reg. 1

6.—(1) The severe disability premium to which paragraph 13 applies may be applicable in addition to [<sup>F585</sup>any other premium which may apply under this Schedule.]

(2) [<sup>F586</sup>The disabled child premium and the carer premium to which paragraphs 14 and 14ZA respectively apply] may be applicable in addition to any other premium which may apply under this Schedule.

#### Textual Amendments

- F585** Words in Sch. 2 para. 6(1) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **6(d)**
- F586** Words in Sch. 2 para. 6(2) substituted (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **8(b)** (with reg. 1(2))

#### Commencement Information

- I97** Sch. 2 para. 6 in force at 11.4.1988, see reg. 1

7.—[<sup>F587</sup>(1)] [<sup>F588</sup>Subject to sub-paragraph (2)] for the purposes of this Part of this Schedule, once a premium is applicable to claimant under this Part, a person shall be treated as being in receipt of any benefit—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979 <sup>F589</sup> applies, for any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and
- (b) for any period spent by a person in undertaking a course of training or instruction provided or approved by the [<sup>F590</sup>Secretary of State for Education and Employment] under section 2 of the Employment and Training Act 1973 <sup>F591</sup>[<sup>F592</sup>or by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990,][<sup>F593</sup>or for any period during which he is in receipt of a training allowance].

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[<sup>F594</sup>(2) For the purposes of the carer premium under paragraph 14ZA, a person shall be treated as being in receipt of invalid care allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance [<sup>F595</sup>, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 37ZB(3) of the Social Security Act.].]

#### Textual Amendments

- F587** Sch. 2 para. 7 renumbered as Sch. 7 para. 7(1) (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **8(c)(i)** (with reg. 1(2))
- F588** Words in Sch. 2 para. 7(1) inserted (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **8(c)(i)** (with reg. 1(2))
- F589** S.I. 1979/597.
- F590** Words in Sch. 2 para. 7(1)(b) substituted (1.1.1996) by [The Transfer of Functions \(Education and Employment\) Order 1995 \(S.I. 1995/2986\)](#), arts. 1, **6(5)**
- F591** 1973 c. 50 as amended by sections 9 and 11 and Schedule 2 Part II paragraph 9 and Schedule 3 of the [Employment and Training Act 1981 \(c. 57\)](#).
- F592** Words in Sch. 2 para. 7(1)(b) added (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, **9(d)**
- F593** Words in Sch. 2 para. 7(b) inserted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **6(e)**
- F594** Sch. 2 para. 7(2) added (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **8(c)(ii)** (with reg. 1(2))
- F595** Words in Sch. 2 para. 7(2) added (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(4)(a) (with reg. 1(2))**

#### Commencement Information

- I98** Sch. 2 para. 7 in force at 11.4.1988, see reg. 1

### Lone Parent Premium

8. The condition is that the claimant is a member of a family but has no partner.

#### Commencement Information

- I99** Sch. 2 para. 8 in force at 11.4.1988, see reg. 1

### [<sup>F596</sup>Pensioner premium for persons under 75

9. The condition is that the claimant—
- is a single claimant or lone parent aged not less than 60 but less than 75; or
  - has a partner and is, or his partner is, aged not less than 60 but less than 75.

#### Textual Amendments

- F596** Sch. 2 paras. 9-9A substituted for Sch. 2 para. 9 (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **5(a)**

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### Commencement Information

**I100** Sch. 2 para. 9 in force at 11.4.1988, see reg. 1

### Pensioner premium for persons 75 and over

**9A.** The condition is that the claimant—

- (a) is a single claimant or lone parent aged not less than 75 but less than 80; or
- (b) has a partner and is, or his partner is, aged not less than 75 but less than 80.]

### Textual Amendments

**F596** Sch. 2 paras. 9-9A substituted for Sch. 2 para. 9 (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), 5(a)

### Higher Pensioner Premium

**10.**—(1) Where the claimant is a single claimant or a lone parent, the condition is that—

- (a) he is aged not less than 80; or
- (b) he is aged less than 80 but not less than 60, and
  - (i) the additional condition specified in paragraph 12(1)(a) [<sup>F597</sup>or (c)] is satisfied; or
  - (ii) he was entitled to income support and the disability premium was applicable to him in respect of a benefit week within eight weeks of his 60th birthday and he has, subject to sub-paragraph (3), remained continuously entitled to income support since attaining that age.

(2) Where the claimant has a partner, the condition is that—

- (a) he or his partner is aged not less than 80; or
- (b) he or his partner is aged less than 80 but not less than 60 and either—
  - (i) the additional condition specified in paragraph 12(1)(a) [<sup>F597</sup>or (c)] is satisfied<sup>F598</sup> ...; or
  - (ii) he was entitled to income support and the disability premium was applicable to him in respect of a benefit week within eight weeks of his 60th birthday and he has, subject to sub-paragraph (3), remained continuously entitled to income support since attaining that age.

(3) For the purposes of this paragraph and paragraph 12—

- (a) once the higher pensioner premium is applicable to a claimant, if he then ceases, for a period of eight weeks or less, to be entitled to income support, he shall, on becoming re-entitled to income support, thereafter be treated as having been continuously entitled thereto;
- (b) in so far as sub-paragraphs (1)(b)(ii) and (2)(b)(ii) are concerned, if a claimant ceases to be entitled to income support for a period not exceeding eight weeks which includes his 60th birthday, he shall, on becoming re-entitled to income support, thereafter be treated as having been continuously entitled thereto.

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#### Textual Amendments

**F597** Words in Sch. 2 para. 10 inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **29(a)**

**F598** Words in Sch. 2 para. 10(2)(b)(i) omitted (6.4.1992) by virtue of [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **6** (with reg. 1(2))

#### Commencement Information

**I101** Sch. 2 para. 10 in force at 11.4.1988, see reg. 1

### Disability Premium

**11.** The condition is that—

- (a) where the claimant is a single claimant or a lone parent, he is aged less than 60 and the additional condition specified in paragraph 12 is satisfied; or
- (b) where the claimant has a partner, either—
  - (i) the claimant is aged less than 60 and the additional condition specified in paragraph [F599]12(1)(a), (b) or (c) is satisfied by him; or
  - (ii) his partner is aged less than 60 and the additional condition specified in paragraph 12(1)(a) [F600] or (c) is satisfied by his partner.

#### Textual Amendments

**F599** Words in Sch. 2 para. 11(b)(i) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **29(b)(i)**

**F600** Words in Sch. 2 para. 11(b)(ii) inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **29(b)(ii)**

#### Commencement Information

**I102** Sch. 2 para. 11 in force at 11.4.1988, see reg. 1

### Additional condition for the Higher Pensioner and Disability Premiums

**12.—**(1) Subject to sub-paragraph (2) and paragraph 7 the additional condition referred to in paragraphs 10 and 11 is that either—

- (a) the claimant or, as the case may be, his partner—
  - (i) is in receipt of one or more of the following benefits: attendance allowance, [F601]disability living allowance, disability working allowance], mobility supplement, [F602]long-term incapacity benefit] under [F603]Part II of the Contributions and Benefits Act or severe disablement allowance under Part III of that Act][F604]but, in the case of [F602]long-term incapacity benefit] or severe disablement allowance only where it is paid in respect of him]; or
  - (ii) is provided by the Secretary of State with an invalid carriage or other vehicle under section 5(2) of the National Health Service Act 1977 <sup>F605</sup> (other services) or, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978 <sup>F606</sup> (provision of vehicles) or receives payments by way of grant from the Secretary of State under paragraph 2 of Schedule 2 to that 1977 Act (additional provisions as to vehicles) or, in Scotland, under that section 46; or

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(iii) is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 <sup>F607</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a regional or islands council; or

<sup>F608</sup>(b) the claimant—

(i) is entitled to statutory sick pay or <sup>F609</sup>is, or is treated as, incapable of work,] in accordance with the provisions of Part XIIA of the Contributions and Benefits Act and the regulations made thereunder (incapacity for work), and

(ii) has been so entitled or so incapable<sup>F610</sup>, or has been treated as so incapable,] for a continuous period of not less than—

(aa) 196 days in the case of a claimant who is terminally ill within the meaning of section 30B(4) of the Contributions and Benefits Act; or

(bb) 364 days in any other case;

and for these purposes any two or more periods of entitlement or incapacity separated by a break of not more than 56 days shall be treated as one continuous period; or; and]

(c) the claimant or, as the case may be, his partner was in receipt of either—

<sup>F611</sup>(i) <sup>F612</sup>long-term incapacity benefit] under <sup>F613</sup>Part II of the Contributions and Benefits Act] when entitlement to that benefit ceased on account of the payment of a retirement pension under <sup>F613</sup>that Act] and the claimant has since remained continuously entitled to income support and, if the <sup>F612</sup>long-term incapacity benefit] was payable to his partner, the partner is still alive; or]

(ii) except where paragraph 1(a), (b), (c)(ii) or (d)(ii) of Schedule 7 (patients) applies, attendance allowance <sup>F614</sup>or disability living allowance but payment of benefit has been suspended in accordance with regulations made under <sup>F615</sup>section 113(2) of the Contributions and Benefits Act 1992 or otherwise abated as a consequence of the claimant or his partner becoming a patient within the meaning of regulation 21(3) (special cases)],]

and, in either case, the higher pensioner premium or disability premium has been applicable to the claimant or his partner.

(2) For the purposes of sub-paragraph (1)(a)(iii), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

<sup>F616</sup>(3) .....

(4) For the purpose of sub-paragraph (1)(c), once the higher pensioner premium is applicable to the claimant by virtue of his satisfying the condition specified in that provision, if he then ceases, for a period of eight weeks or less, to be entitled to income support, he shall on again becoming so entitled to income support, immediately thereafter be treated as satisfying the condition in sub-paragraph (1)(c).

<sup>F617</sup>(5) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to a claimant by virtue of his satisfying the additional condition specified in that provision, he shall continue to be treated as satisfying that condition for any period spent by him in undertaking a course of training provided under section 2 of the Employment and Training Act 1973 <sup>F618</sup>or for any period during which he is in receipt of a training allowance].]

<sup>F619</sup>(6) For the purposes of sub-paragraph (1)(a)(i) and (c)(i), a reference to a person in receipt of long-term incapacity benefit includes a person in receipt of short-term incapacity benefit at a rate

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equal to the long-term rate by virtue of section 30B(4)(a) of the Contributions and Benefits Act (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to him is or was equal to or greater than the long-term rate.]

### Textual Amendments

- F601** Words in Sch. 2 para. 12(1)(a)(i) substituted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(4)(b) (with reg. 1(2))**
- F602** Words in Sch. 2 para. 12(1)(a)(i) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **16(2)** (with regs. 1(4), 20(4))
- F603** Words in Sch. 2 para. 12(1)(a)(i) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **30(2)**
- F604** Words in Sch. 2 para. 12(1)(a)(i) inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **29(c)(i)**
- F605** 1977 c. 49; section 5(2) amended and subsection (2A) added by section 1 of the [Public Health Laboratory Service Act 1979 \(c. 23\)](#) and subsection (2B) added by section 9 of the [Health and Social Security Act 1984 \(c. 48\)](#).
- F606** 1978 c. 29.
- F607** 1948 c. 29; section 29 was amended by section 1(2) of the [National Assistance \(Amendment\) Act 1959 \(c. 30\)](#); the [Mental Health \(Scotland\) Act 1960 \(c. 61\)](#) sections 113 and 114 and Schedule 4; the [Local Government Act 1972 \(c. 70\)](#) Schedule 23 paragraph 2; the [Employment and Training Act 1973 \(c. 50\)](#) Schedule 3 paragraph 3; the [National Health Service Act 1977 \(c. 49\)](#) Schedule 15 paragraph 6; and the [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41\)](#) Schedule 10 Part I.
- F608** Sch. 2 para. 12(1)(b) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **17(a)** (with reg. 1(4))
- F609** Words in Sch. 2 para. 12(1)(b)(i) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(8)(a)** (with reg. 8)
- F610** Words in Sch. 2 para. 12(1)(b)(ii) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(8)(b)** (with reg. 8)
- F611** Sch. 2 para. 12(1)(c)(i) substituted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(4)(c) (with reg. 1(2))**
- F612** Words in Sch. 2 para. 12(1)(c)(i) substituted (13.4.1995) by [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **16(2)** (with regs. 1(4), 20(4))
- F613** Words in Sch. 2 para. 12(1)(c)(i) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **30(3)**
- F614** Words in Sch. 2 para. 12(1)(c)(ii) substituted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(4)(d) (with reg. 1(2))**
- F615** Words in Sch. 2 para. 12(1)(c)(ii) substituted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **24** (with reg. 1(2))
- F616** Sch. 2 para. 12(3) omitted (13.4.1995) by virtue of [The Disability Working Allowance and Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/482\)](#), regs. 1(1), **17(b)** (with reg. 1(4))
- F617** Sch. 2 para. 12(5) added (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **17(b)**

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**F618** Words in Sch. 2 para. 12(5) inserted (9.10.1989) by The Income Support (General) Amendment No. 3 Regulations 1989 (S.I. 1989/1678), regs. 1(1)(a), **6(e)**

**F619** Sch. 2 para. 12(6) added (13.4.1995) by The Disability Working Allowance and Income Support (General) Amendment Regulations 1995 (S.I. 1995/482), regs. 1(1), **16(3)** (with reg. 1(4))

**Modifications etc. (not altering text)**

**C21** Sch. 2 para. 12(1) modified (13.4.1995) by The Disability Working Allowance and Income Support (General) Amendment Regulations 1995 (S.I. 1995/482), regs. 1(1), **19(4)** (with reg. 1(4))

**Commencement Information**

**I103** Sch. 2 para. 12 in force at 11.4.1988, see reg. 1

**Severe Disability Premium**

**13.—(1)** The condition is that the claimant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), a claimant shall be treated as being a severely disabled person if, and only if—

(a) in the case of a single claimant<sup>F620</sup>, a lone parent or a claimant who is treated as having no partner in consequence of sub-paragraph (2A)]—

(i) he is in receipt of attendance allowance<sup>F621</sup>, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 37ZB(3) of the Social Security Act], and

(ii) subject to sub-paragraph (3), he has no non-dependants aged 18 or over [<sup>F622</sup>normally residing with him or with whom he is normally residing,] and

(iii) <sup>F623</sup>... an invalid care allowance under section 37 of the Social Security Act <sup>F624</sup> [<sup>F625</sup>is not in payment to anyone] in respect of caring for him;

(b) if he has a partner—

(i) he is in receipt of attendance allowance<sup>F626</sup>, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 37ZB(3) of the Social Security Act]; and

(ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, all the partners of that marriage are in receipt thereof; and

(iii) subject to sub-paragraph (3), he has no non-dependants aged 18 or over [<sup>F627</sup>normally residing with him or with whom he is normally residing,]

and, either [<sup>F628</sup>an invalid care allowance is in payment to someone] in respect of caring for only one of the couple or, in the case of a polygamous marriage, for one or more but not all the partners of the marriage, or, as the case maybe, [<sup>F628</sup>such an allowance is not in payment to anyone] in respect of caring for either member of the couple or any partner of the polygamous marriage.

[<sup>F629</sup>(2A) Where a claimant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of paragraph 12(1)(a)(iii) and (2), that partner shall be treated for the purposes of sub-paragraph (2) as if he were not a partner of the claimant.]

(3) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account shall be taken of—

(a) a person receiving attendance allowance<sup>F630</sup>, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 37ZB(3) of the Social Security Act]; or



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<sup>F631</sup>(b) .....

- (c) subject to sub-paragraph (4), a person who joins the claimant's household for the first time in order to care for the claimant or his partner and immediately before so joining the claimant or his partner was treated as a severely disabled person; [<sup>F632</sup>or
- (d) a person who is blind or is treated as blind within the meaning of paragraph 12(1)(a)(iii) and (2).]

[<sup>F633</sup>(3A) For the purposes of sub-paragraph (2)(b) a person shall be treated as being in receipt of—

- (a) attendance allowance[<sup>F634</sup>, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 37ZB(3) of the Social Security Act] if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
- (b) invalid care allowance if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so in receipt.]

[<sup>F635</sup>(3ZA) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b), no account shall be taken of an award of invalid care allowance to the extent that payment of such an award is back-dated for a period before the date on which the award is made.]

(4) Sub-paragraph (3)(c) shall apply only for the first 12 weeks following the date on which the person to whom that provision applies first joins the claimant's household.

#### Textual Amendments

- F620** Words in Sch. 2 para. 13(2)(a) substituted (25.5.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/1150\)](#), regs. 1(1), **3(2)**
- F621** Words in Sch. 2 para. 13(2)(a)(i) inserted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(4)(e)** (with reg. 1(2))
- F622** Words in Sch. 2 para. 13(2)(a)(ii) substituted (2.12.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 6\) Regulations 1994 \(S.I. 1994/3061\)](#), regs. 1, **2(3)**
- F623** Words in Sch. 2 para. 13(2)(a)(iii) omitted (9.10.1989) by virtue of [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **6(f)(i)**
- F624** Section 37 was amended by the [Social Security \(Miscellaneous Provisions\) Act 1977 \(c. 5\)](#), **section 22(2)**.
- F625** Words in Sch. 2 para. 13(2)(a)(iii) inserted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **6(f)(i)**
- F626** Words in Sch. 2 para. 13(2)(b)(i) inserted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(4)(e)** (with reg. 1(2))
- F627** Words in Sch. 2 para. 13(2)(b)(iii) substituted (2.12.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 6\) Regulations 1994 \(S.I. 1994/3061\)](#), regs. 1, **2(3)**
- F628** Words in Sch. 2 para. 13(2)(b) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **6(f)(ii)**
- F629** Sch. 2 para. 13(2A) inserted (25.5.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/1150\)](#), regs. 1(1), **3(3)**
- F630** Words in Sch. 2 para. 13(3)(a) inserted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(4)(e)** (with reg. 1(2))
- F631** Sch. 2 para. 13(3)(b) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **18(3)**

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- F632** Sch. 2 para. 13(3)(d) and word added (25.5.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/1150\)](#), regs. 1(1), **3(4)**
- F633** Sch. 2 para. 13(3A) inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **29(d)**
- F634** Words in Sch. 2 para. 13(3A)(a) inserted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(4)(e)** (with reg. 1(2))
- F635** Sch. 2 para. 13(3ZA) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **30(4)**

#### Modifications etc. (not altering text)

- C22** Sch. 2 para. 13(2)(a)(ii) modified (11.11.1991) by [The Income Support \(General\) Amendment No. 6 Regulations 1991 \(S.I. 1991/2334\)](#), regs. 1(1), **4(2)** (with regs. 1(2), 4(1), 5, 6)
- C23** Sch. 2 para. 13(2)(b)(iii) modified (11.11.1991) by [The Income Support \(General\) Amendment No. 6 Regulations 1991 \(S.I. 1991/2334\)](#), regs. 1(1), **4(2)** (with regs. 1(2), 4(1), 5, 6)

#### Commencement Information

- I104** Sch. 2 para. 13 in force at 11.4.1988, see reg. 1

### Disabled Child Premium

14. The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

- (a) has no capital or capital which, if calculated in accordance with Part V in like manner as for the claimant, [<sup>F636</sup>except as provided in regulation 44(1) (modifications in respect of children and young persons)], would not exceed £3,000; and
- (b) is in receipt of [<sup>F637</sup>disability living allowance] or is no longer in receipt of that allowance because he is a patient provided that the child or young person continues to be a member of the family; or
- (c) is blind or treated as blind within the meaning of paragraph 12(1)(a)(iii) and (2).

#### Textual Amendments

- F636** Words in Sch. 2 para. 14(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **18(4)**
- F637** Words in Sch. 2 para. 14(b) substituted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(4)(f)** (with reg. 1(2))

#### Modifications etc. (not altering text)

- C24** [Sch. 2 Pt. III para. 14\(a\)](#) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(2)**

#### Commencement Information

- I105** Sch. 2 para. 14 in force at 11.4.1988, see reg. 1

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## [<sup>F638</sup>Carer premium

**14ZA.**—(1) [<sup>F639</sup>Subject to sub-paragraphs (3) and (4),] the condition is that the claimant or his partner is, or both of them are, in receipt of invalid care allowance under section 37 of the Social Security Act.

(2) If a claimant or his partner, or both of them, would be in receipt of invalid care allowance but for the provisions of the Social Security (Overlapping Benefits) Regulations 1979, where—

- (a) the claim for that allowance was made on or after 1st October 1990, and
- (b) the person or persons in respect of whose care the allowance has been claimed remains or remain in receipt of attendance allowance<sup>F640</sup>, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 37ZB(3) of the Social Security Act],

he or his partner, or both of them, as the case may be, shall be treated for the purposes of sub-paragraph (1) as being in receipt of invalid care allowance.]

[<sup>F641</sup>(3) Where a carer premium is awarded but the person in respect of whom it has been awarded either ceases to be in receipt of, or ceases to be treated as being in receipt of, invalid care allowance, the condition for the award of the premium shall be treated as satisfied for a period of eight weeks from the date on which that person ceased to be in receipt of, or ceased to be treated as being in receipt of, invalid care allowance.

(4) Where a person who has been receiving, or who has been treated as receiving invalid care allowance ceases to be in receipt of, or ceases to be treated as being in receipt, of that allowance and makes a claim for income support, the condition for the award of the carer premium shall be treated as satisfied for a period of eight weeks from the date that the person was last in receipt of, or was last treated as being in receipt of, invalid care allowance.]

### Textual Amendments

- F638** Sch. 2 para. 14ZA inserted (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **8(d)** (with reg. 1(2))
- F639** Words in Sch. 2 para. 14ZA(1) inserted (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **15(d)(i)** (with reg. 1(2))
- F640** Words in Sch. 2 para. 14ZA(2)(b) inserted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(4)(g)** (with reg. 1(2))
- F641** Sch. 2 para. 14ZA(3)(4) added (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **15(d)(ii)** (with reg. 1(2))

## [<sup>F642</sup>Persons in receipt of concessionary payments

**14A.** For the purpose of determining whether a premium is applicable to a person [<sup>F643</sup>under paragraphs 12 to 14ZA], any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.]

### Textual Amendments

- F642** Sch. 2 para. 14A inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **19(d)**

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**F643** Words in Sch. 2 para. 14A substituted (5.8.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(a), **15(e)** (with reg. 1(2))

#### **[<sup>F644</sup>Person in receipt of benefit**

**14B.** For the purposes of this Part of this Schedule, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.]

#### **Textual Amendments**

**F644** Sch. 2 para. 14B inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **17**

## **PART IV**

### **Weekly amounts of premiums specified in part III**

#### **Commencement Information**

**I106** Sch. 2 Pt. IV in force at 11.4.1988, see [reg. 1](#)

<i>Premium</i>	<i>Amount</i>
<b>15.</b> —	(1) [ <sup>F645</sup> £5.20];
(1) Lone parent premium.	
(2) Pensioner premium for persons aged under 75—	
(a) (a) where the claimant satisfies the condition in paragraph 9(a);	(a) (2) (a) [ <sup>F645</sup> £19.15];
(b) (b) where the claimant satisfies the condition in paragraph 9(b).	(b) (b) [ <sup>F645</sup> £28.90];
(2A) Pensioner premium for persons aged 75 and over—	
(a) (a) where the claimant satisfies the condition in paragraph 9A(a);	(a) (2A) (a) [ <sup>F645</sup> £21.30];
(b) (b) where the claimant satisfies the condition in paragraph 9A(b).	(b) (b) [ <sup>F645</sup> £31.90];
(3) Higher Pensioner Premium—	
(a) (a) where the claimant satisfies the condition in paragraph 10(1)(a) or (b);	(a) (3) (a) [ <sup>F645</sup> £25.90];
(b) (b) where the claimant satisfies the condition in paragraph 10(2)(a) or (b).	(b) (b) [ <sup>F645</sup> £37.05];
(4) Disability Premium—	

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Premium	Amount
(a) (a) where the claimant satisfies the condition in paragraph 11(a);	(a) (4) (a) [ <sup>F645</sup> £20.40];
(b) (b) where the claimant satisfies the condition in paragraph 11(b).	(b) (b) [ <sup>F645</sup> £29.15];
(5) Severe Disability Premium—	
(a) (a) where the claimant satisfies the condition in paragraph 13(2)(a);	(a) (5) (a) [ <sup>F645</sup> £36.40];
(b) (b) where the claimant satisfies the condition in paragraph 13(2)(b)—	
(i) if there is someone in receipt of an invalid care allowance or if he or any partner satisfies that condition only by virtue of paragraph 13(3A);	(b) (i) [ <sup>F645</sup> £36.40];
(ii) if no-one is in receipt of such an allowance.	(ii) [ <sup>F645</sup> £72.80];
(6) Disabled Child Premium.	(6) [ <sup>F645</sup> £20.40;] in respect of each child or young person in respect of whom the conditions specified in paragraph 14 are satisfied.
(7) Carer Premium.	(7) [ <sup>F645</sup> £13.00;] in respect of each person who satisfied the condition specified in paragraph 14ZA.

#### Textual Amendments

**F645** Sch. 2 Pt. IV sums substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), art. 18(5), **Sch. 5**

## PART V

### rounding of fractions

**16.** Where income support is awarded for a period which is not a complete benefit week and the applicable amount in respect of that period results in an amount which includes a fraction of a penny that fraction shall be treated as a penny.

#### Commencement Information

**I107** Sch. 2 para. 16 in force at 11.4.1988, see reg. 1

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## [<sup>F646</sup>SCHEDULE 3

Regulations 17(1)(e) and 18(1)(f)

### HOUSING COSTS

#### Textual Amendments

**F646** Sch. 3 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Income Support and Claims and Payments\) Amendment Regulations 1995 \(S.I. 1995/1613\)](#), reg. 1(1), Sch. 1

#### Housing Costs

1.—(1) Subject to the following provisions of this Schedule, the housing costs applicable to claimant are those costs—

- (a) which he or, where he is a member of a family, he or any member of that family is, in accordance with paragraph 2, liable to meet in respect of the dwelling occupied as the home which he or any other member of his family is treated as occupying, and
- (b) which qualify under paragraphs 15 to 17.

(2) In this Schedule—

“housing costs” means those costs to which sub-paragraph (1) refers;

“existing housing costs” means housing costs arising under an agreement entered into before 2nd October 1995, or under an agreement entered into after 1st October 1995 (“the new agreement”)—

- (a) which replaces an existing agreement between the same parties in respect of the same property; and
- (b) where the existing agreement was entered into before 2nd October 1995; and
- (c) which is for a loan of the same amount as or less than the amount of the loan under the agreement it replaces, and for this purpose any amount payable <sup>F647</sup>... to arrange the new agreement and included in the loan shall be disregarded;

“new housing costs” means housing costs arising under an agreement entered into after 1st October 1995 other than an agreement referred to in the definition of “existing housing costs”;

“standard rate” means the rate for the time being specified in paragraph 12.

(3) For the purposes of this Schedule a disabled person is a person—

- (a) in respect of whom a disability premium, a disabled child premium, a pensioner premium for persons aged 75 or over or a higher pensioner premium is included in his applicable amount or the applicable amount of a person living with him; or
- (b) <sup>F648</sup>... who, had he in fact been entitled to income support, would have had included in his applicable amount a disability premium, a disabled child premium, a pensioner premium for persons aged 75 or over or a higher pensioner premium.

(4) For the purposes of sub-paragraph (3), a person shall not cease to be a disabled person on account of his being disqualified for receiving benefit or treated as capable of work by virtue of the operation of section 171E of the Contributions and Benefits Act (incapacity for work, disqualification etc.).

#### Textual Amendments

**F647** Words in Sch. 3 para. 1(2) omitted (12.12.1995) by virtue of [The Social Security \(Income Support, Claims and Payments and Adjudication\) Amendment Regulations 1995 \(S.I. 1995/2927\)](#), regs. 1(1), 5(2)(a)

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**F648** Words in Sch. 3 para. 1(3) omitted (12.12.1995) by virtue of The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), 5(2)(b)

### **Circumstances in which a person is liable to meet housing costs**

- 2.—(1) A person is liable to meet housing costs where—
- (a) the liability falls upon him or his partner but not where the liability is to a member of the same household as the person on whom the liability falls;
  - (b) because the person liable to meet the housing costs is not meeting them, the claimant as to meet those costs in order to continue to live in the dwelling occupied as the home and it is reasonable in all the circumstances to treat the claimant as liable to meet those costs;
  - (c) he in practice shares the housing costs with other members of the household none of whom are close relatives either of the claimant or his partner, and
    - (i) one or more of those members is liable to meet those costs, and
    - (ii) it is reasonable in the circumstances to treat him as sharing responsibility.
- (2) Where any one or more, but not all, members of the claimant's family are affected by a trade dispute, the housing costs shall be treated as wholly the responsibility of those members of the family not so affected.

### **Circumstances in which a person is to be treated as occupying a dwelling as his home**

3.—(1) Subject to the following provisions of this paragraph, a person shall be treated as occupying as his home the dwelling normally occupied as his home by himself or, if he is a member of a family, by himself and his family and he shall not be treated as occupying any other dwelling as his home.

(2) In determining whether a dwelling is the dwelling normally occupied as the claimant's home for the purposes of sub-paragraph (1) regard shall be had to any other dwelling occupied by the claimant or by him and his family whether or not that other dwelling is in Great Britain.

(3) Subject to sub-paragraph (4), where a single claimant or a lone parent is a student or is on a training course and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which he occupies for the purpose of attending his course of study or his training course or, as the case may be, the dwelling which he occupies when not attending his course, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.

(4) A full-time student shall not be treated as occupying a dwelling as his home for any week of absence from it, other than an absence occasioned by the need to enter hospital for treatment, outside the period of study, if the main purpose of his occupation during the period of study would be to facilitate attendance on his course.

(5) Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as his home and he is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling normally occupied or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make those payments.

(6) Where a person is liable to make payments in respect of two (but not more than two) dwellings, he shall be treated as occupying both dwellings as his home only—

- (a) where he has left and remains absent from the former dwelling occupied as the home through fear of violence in that dwelling or by a former member of his family and it

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reasonable that housing costs should be met in respect of both his former dwelling and his present dwelling occupied as the home; or

- (b) in the case of a couple or a member of a polygamous marriage where a partner is a student or is on a training course and it is unavoidable that he or they should occupy two separate dwellings and reasonable that housing costs should be met in respect of both dwellings; or
- (c) in the case where a person has moved into a new dwelling occupied as the home, except where sub-paragraph (5) applies, for a period not exceeding four benefit weeks if his liability to make payments in respect of two dwellings is unavoidable.

(7) Where—

- (a) a person has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
- (b) he had claimed income support before moving in and either that claim has not yet been determined or it has been determined but an amount has not been included under this Schedule and if the claim has been refused a further claim has been made within four weeks of the date on which the claimant moved into the new dwelling occupied as the home; and
- (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and—
  - (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the claimant or any member of his family; or
  - (ii) the move was delayed pending the outcome of an application under Part VIII of the Contributions and Benefits Act for a social fund payment to meet a need arising out of the move or in connection with setting up the home in the dwelling and either a member of the claimant's family is aged five or under or the claimant's applicable amount includes a premium under paragraph 9, 9A, 10, 11, 13 or 14 of Schedule 2; or
  - (iii) the person became liable to make payments in respect of the dwelling while he was a patient or was in residential accommodation,

he shall be treated as occupying the dwelling as his home for any period not exceeding four weeks immediately prior to the date on which he moved into the dwelling and in respect of which he was liable to make payments.

(8) This sub-paragraph applies to a person who enters residential accommodation—

- (a) for the purpose of ascertaining whether the accommodation suits his needs; and
- (b) with the intention of returning to the dwelling which he normally occupies as his home should, in the event, the residential accommodation prove not to suit his needs,

and while in the accommodation, the part of the dwelling which he normally occupies as his home is not let, or as the case may be, sub-let to another person.

(9) A person to whom sub-paragraph (8) applies shall be treated as occupying the dwelling he normally occupies as his home during any period (commencing with the day he enters the accommodation) not exceeding 13 weeks in which the person is resident in the accommodation, but only in so far as the total absence from the dwelling does not exceed 52 weeks.

(10) A person, other than a person to whom sub-paragraph (11) applies, shall be treated as occupying a dwelling as his home throughout any period of absence not exceeding 13 weeks, if, and only if—

- (a) he intends to return to occupy the dwelling as his home; and
- (b) the part of the dwelling normally occupied by him has not been let or, as the case may be, sub-let to another person; and
- (c) the period of absence is unlikely to exceed 13 weeks.



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(11) This sub-paragraph applies to a person whose absence from the dwelling he normally occupies as his home is temporary and—

- (a) he intends to return to occupy the dwelling as his home; and
- (b) while the part of the dwelling which is normally occupied by him has not been let or, as the case may be, sub-let; and
- (c) he is—
  - (i) detained in custody on remand pending trial or, as a condition of bail, required to reside in a hostel approved under section 27(1) of the Probation Service Act 1993, or, as the case may be, detained pending sentence upon conviction, or
  - (ii) resident in a hospital or similar institution as a patient, or
  - (iii) undergoing or, as the case may be, his partner or his dependent child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation, or
  - (iv) following, in the United Kingdom or elsewhere, a training course, or
  - (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere, or
  - (vi) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment, or
  - (vii) a person who is, whether in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation, or
  - (viii) a student to whom sub-paragraph (3) or (6)(b) does not apply, or
  - (ix) a person other than a person to whom sub-paragraph (8) applies, who is receiving care provided in residential accommodation; or
  - (x) a person to whom sub-paragraph (6)(a) does not apply and who has left the dwelling he occupies as his home through fear of violence in that dwelling<sup>F649</sup>, or by a person] who was formerly a member of his family; and
- (d) the period of his absence is unlikely to exceed a period of 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

(12) A person to whom sub-paragraph (11) applies is to be treated as occupying the dwelling he normally occupies as his home during any period of absence not exceeding 52 weeks beginning with the first day of that absence.

(13) In this paragraph—

- (a) “medically approved” means certified by a medical practitioner;
- (b) “patient” means a person who is undergoing medical or other treatment as an inpatient in a hospital or similar institution; “residential accommodation” means accommodation—
  - (i) provided under sections 21 to 24 and 26 of the National Assistance Act 1948 (provision of accommodation); or
  - (ii) provided under sections 13B and 59 of the Social Work (Scotland) Act 1968 (provision of residential and other establishments) where board is available to the claimant; or
  - (iii) which is a residential care home within the meaning of that expression in regulation 19(3) (persons in residential care or nursing homes) other than sub-paragraph (b) of that definition; or
  - (iv) which is a nursing home;

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- (d) “training course” means such a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

#### Textual Amendments

**F649** Words in Sch. 3 para. 3(11) substituted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), **5(3)**

#### Housing costs not met

4.—(1) No amount may be met under the provisions of this Schedule—

- (a) in respect of housing benefit expenditure; or
- (b) where the claimant is in accommodation which is a residential care home or a nursing home except where he is in such accommodation during a temporary absence from the dwelling he occupies as his home and in so far as they relate to temporary absences, the provisions of paragraph 3(8) to (12) apply to him during that absence.

(2) Subject to the following provisions of this paragraph, loans which, apart from this paragraph, qualify under paragraph 15 shall not so qualify where the loan was incurred during one relevant period and was incurred—

- (a) after 1st October 1995, or
- (b) after 2nd May 1994 and the housing costs applicable to that loan were not met by virtue of the former paragraph 5A of this Schedule in any one or more of the 26 weeks preceding 2nd October 1995, or
- (c) subject to sub-paragraph (3), in the 26 weeks preceding 2nd October 1995 by a person—
  - (i) who was not at that time entitled to income support; and
  - (ii) who becomes, or whose partner becomes entitled to income support after 1st October 1995 and that entitlement is within 26 weeks of an earlier entitlement to income support for the claimant or his partner.

(3) Sub-paragraph (2)(c) shall not apply in respect of a loan where the claimant has interest payments on that loan met without restrictions under an award of income support in respect of a period commencing before 2nd October 1995.

[<sup>F650</sup>(4) The “relevant period” for the purposes of this paragraph is any period during which the person to whom the loan was made —

- (a) is entitled to income support, or
- (b) is living as a member of a family one of whom is entitled to income support,

together with any linked period, that is to say a period falling between two such periods of entitlement to income support separated by not more than 26 weeks.]

(5) For the purposes of sub-paragraph (4)—

- (a) any week in the period of 26 weeks ending on 1st October 1995 on which there arose an entitlement to income support such as is mentioned in that sub-paragraph shall be taken into account in determining when the relevant period commences; and
- (b) two or more periods of entitlement and any intervening linked periods shall together form a single relevant period.

(6) Where the loan to which sub-paragraph (2) refers has been applied—

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- (a) for paying off an earlier loan, and that earlier loan qualified under paragraph 15; or
- (b) to finance the purchase of a property where a previous loan secured on another property was paid off (in whole or in part) with monies received from the sale of that property;

then the amount of the loan to which sub-paragraph (2) applies is the amount (if any) by which the new loan exceeds the earlier loan.

(7) Notwithstanding the preceding provisions of this paragraph, housing costs shall be met in any case where a claimant satisfies any of the conditions specified in sub-paragraphs (8) to (11) below, but—

- (a) those costs shall be subject to any additional limitations imposed by the sub-paragraph; and
- (b) where the claimant satisfies the conditions in more than one of these sub-paragraphs, only one sub-paragraph shall apply in his case and the one that applies shall be the one most favourable to him.

(8) The conditions specified in this sub-paragraph are that—

- (a) during the relevant period the claimant or a member of his family acquires an interest (“the relevant interest”) in a dwelling which he then occupies or continues to occupy, as his home; and
- (b) in the week preceding the week in which the relevant interest was acquired, housing benefit was payable to the claimant or a member of his family;

so however that the amount to be met by way of <sup>F651</sup>... housing costs shall initially not exceed the aggregate of—

- (i) the housing benefit payable in the week mentioned at sub-paragraph (8)(b); and
- (ii) any amount included in the applicable amount of the claimant or a member of his family in accordance with regulation 17(1)(e) or 18(1)(f) in that week;

and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of the acquisition, in the standard rate or in any housing costs which qualify under paragraph 17 (other housing costs).

(9) The condition specified in this sub-paragraph is that the loan was taken out, or an existing loan increased, to acquire alternative accommodation more suited to the special needs of a disabled person than the accommodation which was occupied before the acquisition by the claimant.

(10) The conditions specified in this sub-paragraph are that—

- (a) the loan commitment increased in consequence of the disposal of the dwelling occupied as the home and the acquisition of an alternative such dwelling; and
- (b) the change of dwelling was made solely by reason of the need to provide separate sleeping accommodation for children of different sexes aged 10 or over who belong to the same family as the claimant.

(11) The conditions specified in this sub-paragraph are that—

- (a) during the relevant period the claimant or a member of his family acquires an interest (“the relevant interest”) in a dwelling which he then occupies as his home; and
- (b) in the week preceding the week in which the relevant interest was acquired, the applicable amount of the claimant or a member of his family included an amount determined by reference to paragraph 17 and did not include any amount specified in paragraph 15 or paragraph 16; so however that the amount to be met [<sup>F652</sup>by way of housing costs] shall initially not exceed the amount so determined, and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of acquisition, in the standard rate or in any housing costs which qualify under paragraph 17 (other housing costs).

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(12) The following provisions of this Schedule shall have effect subject to the provisions of this paragraph.

#### Textual Amendments

- F650** Sch. 3 para. 4(4) substituted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), **5(4)(a)**
- F651** Word in Sch. 3 para. 4(8) omitted (12.12.1995) by virtue of The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), **regs. 1(1), 5(4)(b)**
- F652** Words in Sch. 3 para. 4(11) substituted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), **regs. 1(1), 5(4)(c)**

#### Apportionment of housing costs

5.—(1) Where the dwelling occupied as the home is a composite hereditament and—

- (a) before 1st April 1990 for the purposes of section 48(5) of the General Rate Act 1967 (reduction of rates on dwellings), it appeared to a rating authority or it was determined in pursuance of subsection (6) of section 48 of that Act that the hereditament, including the dwelling occupied as the home, was a mixed hereditament and that only a proportion of the rateable value of the hereditament was attributable to use for the purpose of a private dwelling; or
- (b) in Scotland, before 1st April 1989 an assessor acting pursuant to section 45(1) of the Water (Scotland) Act 1980 (provision as to valuation roll) has apportioned the net annual value of the premises including the dwelling occupied as the home between the part occupied as a dwelling and the remainder,

the amounts applicable under this Schedule shall be such proportion of the amounts applicable in respect of the hereditament or premises as a whole as is equal to the proportion of the rateable value of the hereditament attributable to the part of the hereditament used for the purposes of a private tenancy or, in Scotland, the proportion of the net annual value of the premises apportioned to the part occupied as a dwelling house.

(2) Subject to sub-paragraph (1) and the following provisions of this paragraph, where the dwelling occupied as the home is a composite hereditament, the amount applicable under this Schedule shall be the relevant fraction of the amount which would otherwise be applicable under this Schedule in respect of the dwelling occupied as the home.

(3) For the purposes of sub-paragraph (2), the relevant fraction shall be obtained in accordance with the formula—

$$AA+B$$

where— “A” is the current market value of the claimant’s interest in that part of the composite hereditament which is domestic property within the meaning of section 66 of the Act of 1988;

“B” is the current market value of the claimant’s interest in that part of the composite hereditament which is not domestic property within that section.

(4) In this paragraph—

“composite hereditament” means—

- (a) as respects England and Wales, any hereditament which is shown as a composite hereditament in a local non-domestic rating list;
- (b) as respects Scotland, any lands and heritages entered in the valuation roll which are part residential subjects within the meaning of section 26(1) of the Act of 1987;

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“local non-domestic rating list” means a list compiled and maintained under section 41(1) of the Act of 1988;

“the Act of 1987” means the Abolition of Domestic Rates Etc.(Scotland) Act 1987;

“the Act of 1988” means the Local Government Finance Act 1988.

(5) Where responsibility for expenditure which relates to housing costs met under this Schedule is shared, the amounts applicable shall be calculated by reference to the appropriate proportion of that expenditure for which the claimant is responsible.

**Modifications etc. (not altering text)**

**C25** Sch. 3 para. 5(3) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), [Sch. 8](#)

**Existing housing costs**

**6.—(1)** Subject to the provisions of this Schedule, the existing housing costs to be met in any particular case are—

- (a) where the claimant has been [<sup>F653</sup>entitled to] income support for a continuous period of 26 weeks or more, the aggregate of—
  - (i) an amount determined in the manner set out in paragraph 10 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 15 or 16; and
  - (ii) an amount equal to any payments which qualify under paragraph 17(1)(a) to (c);
- (b) where the claimant has been [<sup>F653</sup>entitled to] income support for a continuous period of not less than 8 weeks but less than 26 weeks, an amount which is half the amount which would fall to be met by applying the provisions of sub-paragraph (a);
- (c) in any other case, nil.

[<sup>F654</sup>(1A) For the purposes of sub-paragraph (1), the eligible capital for the time being owing shall be determined on the date the existing housing costs are first met and thereafter on each anniversary of that date.]

(2) Where immediately before 2nd October 1995 a claimant’s applicable amount included a sum by way of housing costs in accordance with regulation 17(1)(e) or 18(1)(f), but the claimant had not on that date been entitled to income support for a continuous period of 26 weeks or more, the amount of the housing costs to be met in his case shall, for the balance of the 26 weeks falling after 1st October 1995, be determined in accordance with sub-paragraph (3).

(3) Subject to sub-paragraph (4), where the claimant had on 1st October 1995—

- (a) been entitled to income support for less than 16 consecutive weeks (including the benefit week in which 1st October 1995 falls), any housing costs to be met in his case shall remain at the amount they were before 2nd October 1995 until the end of the 16th consecutive week of that entitlement and shall thereafter be determined as if he had been entitled for a continuous period of 26 weeks;
- (b) been entitled for 16 consecutive weeks or more but less than 26 consecutive weeks (including the benefit week in which 1st October 1995 falls), any housing costs to be met in his case shall be determined as if he had been entitled for 26 weeks.

(4) Sub-paragraph (3) above shall apply in a particular case only for so long as the agreement in respect of which a sum by way of housing costs falls to be met immediately before 2nd October 1995 in accordance with regulation 17(1)(e) or 18(1)(f) remains in force.

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### Textual Amendments

- F653** Words in Sch. 3 para. 6(1) substituted (12.12.1995) by [The Social Security \(Income Support, Claims and Payments and Adjudication\) Amendment Regulations 1995 \(S.I. 1995/2927\)](#), **regs. 1(1), 5(5)(a)**
- F654** Sch. 3 para. 6(1A) inserted (12.12.1995) by [The Social Security \(Income Support, Claims and Payments and Adjudication\) Amendment Regulations 1995 \(S.I. 1995/2927\)](#), **regs. 1(1), 5(5)(b)**

### Modifications etc. (not altering text)

- C26** Sch. 3 para. 6(1)(b) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up Rating Order 1996 \(S.I. 1996/599\)](#), **arts. 1(2)(g), 18(12), Sch. 8**
- C27** Sch. 3 para. 6(1)(c) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up Rating Order 1996 \(S.I. 1996/599\)](#), **arts. 1(2)(g), 18(12), Sch. 8**

### Transitional Protection

7.—(1) Where the amount applicable to a claimant by way of housing costs under regulation 17(1) (e) or regulation 18(1)(f) (as the case may be) in the benefit week which includes 1st October 1995 (“the first benefit week”) is greater than the amount which, in accordance with paragraphs 6 and 10, is applicable in his case in the next succeeding benefit week (“the second benefit week”), the claimant shall be entitled to have his existing housing costs increased by an amount (referred to in this paragraph as “add back”) determined in accordance with the following provisions of this paragraph.

(2) Where the amount to be met by way of housing costs in the first benefit week is greater than the amount to be met in the second benefit week, then the amount of the add back shall be a sum representing the difference between those amounts.

(3) Where the amount of existing housing costs, disregarding the add back, which is applicable to the claimant increases after the second benefit week, the amount of the add back shall be decreased by an amount equal to that increase, and the amount of the add back shall thereafter be the decreased amount.

(4) Any increase in the amount of the existing housing costs, disregarding the add back, shall reduce the amount of the add back in the manner specified in sub-paragraph (3), and where the amount of the add back is reduced to nil, the amount of the existing housing costs shall thereafter not include any amount by way of add back.

(5) Where a person or his partner—

- (a) was entitled to income support; and
- (b) had an applicable amount which included an amount by way of add back in accordance with this paragraph; and
- (c) ceased to be entitled to income support for a continuous period in excess of 12 weeks,

then, on the person or his partner again becoming entitled to income support, the applicable amount of the claimant shall be determined without reference to the provisions relating to add back in sub-paragraphs (1) to (4).

(6) Where a person whose applicable amount included an amount by way of add back under this paragraph loses the right to have an amount by way of housing costs included in his applicable amount, then where that person’s applicable amount again includes an amount by way of housing costs, that amount shall be determined without reference to the provisions relating to add back in sub-paragraphs (1) to (4).

(7) Where the partner of a person to whom sub-paragraph (6) applies becomes entitled to income support and—

- (a) his applicable amount includes an amount by way of existing housing costs, and

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- (b) those housing costs are in respect of payments which were formerly met in the applicable amount of the person to whom sub-paragraph (6) applies

then the provisions of this paragraph shall apply to the partner as they would if he had been responsible for the housing costs immediately before 2nd October 1995 [<sup>F655</sup>provided the claim is made not more than 12 weeks after the last day of entitlement to housing costs relating to a claim made by the person to whom sub-paragraph (6) applies].

(8) Where in the first benefit week, a claimant's applicable amount included an amount by way of housing costs which was calculated by reference to paragraph 7(1)(b)(ii) of Schedule 3 as then in force (50 per cent. of eligible interest met) then for the purposes of this paragraph, the amount of the add back shall be determined by reference to the amount which would have been applicable on that day if 100 per cent. of the claimant's eligible interest had been met, but only from the benefit week following the final benefit week in which paragraph 7(1)(b)(ii) of Schedule 3 would, had it remained in force, have applied in the claimant's case.

(9) Where the existing housing costs of the claimant are determined by reference to two or more loans which qualify under this Schedule, then the provisions of this paragraph shall be applied separately to each of those loans and the amount of the add back (if any) shall be determined in respect of each loan.

#### Textual Amendments

**F655** Words in [Sch. 3 para. 7\(7\)](#) inserted (12.12.1995) by [The Social Security \(Income Support, Claims and Payments and Adjudication\) Amendment Regulations 1995 \(S.I. 1995/2927\)](#), regs. 1(1), **5(6)**

#### Modifications etc. (not altering text)

**C28** [Sch. 3 para. 7\(8\)](#) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**

### New housing costs

**8.—(1)** Subject to the provisions of this Schedule, the new housing costs to be met in any particular case are—

- (a) where the claimant has been [<sup>F656</sup>entitled to] income support for a continuous period of 39 weeks or more, an amount—
- (i) determined in the manner set out in paragraph 10 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 15 or 16; and
  - (ii) equal to any payments which qualify under paragraph 17(1)(a) to (c);
- (b) in any other case, nil.

[<sup>F657</sup>(1A) For the purposes of sub-paragraph (1), the eligible capital for the time being owing shall be determined on the date the new housing costs are first met and thereafter on each anniversary of that date.]

(2) This sub-paragraph applies to a claimant who at the time the claim is made—

- (a) is a person to whom paragraph 4 of Schedule 1 (persons with caring responsibilities not required to be available for employment) applies;
- (b) is detained in custody pending trial or sentence upon conviction; or
- (c) has been refused payments under a policy of insurance on the ground that

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(i) the claim under the policy is the outcome of a pre-existing medical condition which, under the terms of the policy, does not give rise to any payment by the insurer; or

(ii) he was infected by the Human Immunodeficiency Virus,

and the policy was taken out to insure against the risk of being unable to maintain repayments on a loan which is secured by a mortgage or a charge over land, or (in Scotland) by a heritable security.

(3) This sub-paragraph applies subject to sub-paragraph (5) where a person claims income support because of—

(a) the death of a partner; or

(b) being abandoned by his partner,

and where the person's family includes a child.

(4) In the case of a claimant to whom sub-paragraph (2) or (3) applies, any new housing costs shall be met as though they were existing housing costs and paragraph 6 applied to them.

(5) Sub-paragraph (3) shall cease to apply to a person who subsequently becomes one of a couple.

#### Textual Amendments

**F656** Words in Sch. 3 para. 8(1) substituted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), 5(7)(a)

**F657** Sch. 3 para. 8(1A) inserted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), 5(7)(b)

#### Modifications etc. (not altering text)

**C29** Sch. 3 para. 8(1)(b) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by The Social Security Benefits Up-rating Order 1996 (S.I. 1996/599), arts. 1(2)(g), 18(12), Sch. 8

### General exclusions from paragraphs 6 and 8

9.—(1) Paragraphs 6 and 8 shall not apply where—

(a) the claimant or his partner is aged 60 or over;

(b) the housing costs are payments—

(i) under a co-ownership agreement;

(ii) under or relating to a tenancy or licence of a Crown tenant; or

(iii) where the dwelling occupied as the home is a tent, in respect of the tent and the site on which it stands.

(2) In a case falling within sub-paragraph (1), the housing costs to be met are—

(a) where head (a) of sub-paragraph (1) applies, an amount—

(i) determined in the manner set out in paragraph 10 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 15 or 16; and

(ii) equal to the payments which qualify under paragraph 17;

(b) where head (b) of sub-paragraph (1) applies, an amount equal to the payments which qualify under paragraph 17(1)(d) to (f).



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## The calculation for loans

10.—(1) The weekly amount of existing housing costs or, as the case may be, new housing costs to be met under this Schedule in respect of a loan which qualifies under paragraph 15 or 16 shall be calculated by applying the formula:—

$$(A \times B) \times C52$$

where—A = the amount of the loan which qualifies under paragraph 15 or 16;

B = the standard rate for the time being specified in respect of that loan under paragraph 12;

C = the difference between 100 per cent. and the applicable percentage of income tax within the meaning of section 369(1A) of the Income and Corporation Taxes Act 1988 (mortgage interest payable under deduction of tax) for the year of assessment in which the payment of interest becomes due.

(2) Where section 369 of the Income and Corporation Taxes Act 1988 does not apply to the interest on a loan or a part of a loan, the formula applied in sub-paragraph (1) shall have effect as if C had a value of 1.

### Modifications etc. (not altering text)

C30 Sch. 3 para. 10(1) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), [Sch. 8](#)

## General provisions applying to new and existing housing costs

11.—<sup>F658</sup>(1) . . . . .

(2) Where on or after 2nd October 1995 a person enters into a new agreement in respect of a dwelling and an agreement entered into before 2nd October 1995 (“the earlier agreement”) continues in force independently of the new agreement, then—

- (a) the housing costs applicable to the new agreement shall be calculated by reference to the provisions of paragraph 8 (new housing costs);
- (b) the housing costs applicable to the earlier agreement shall be calculated by reference to the provisions of paragraph 6 (existing housing costs);

and the resulting amounts shall be aggregated.

(3) [<sup>F659</sup>Sub-paragraph (2) does] not apply in the case of a claimant to whom paragraph 9 applies.

(4) Where for the time being a loan exceeds, or in a case where more than one loan is to be taken into account, the aggregate of those loans exceeds the appropriate amount specified in sub-paragraph (5), then the amount of the loan or, as the case may be, the aggregate amount of those loans, shall for the purposes of this Schedule, be the appropriate amount.

(5) Subject to the following provisions of this paragraph, the appropriate amount is £100,000.

(6) Where a person is treated under paragraph 3(6) (payments in respect of two dwellings) occupying two dwellings as his home, then the restrictions imposed by sub-paragraph (4) shall be applied separately to the loans for each dwelling.

(7) In a case to which paragraph 5 (apportionment of housing costs) applies, the appropriate amount for the purposes of sub-paragraph (4) shall be the lower of—

- (a) a sum determined by applying the formula—

$$P \times Q,$$

where—P = the relevant fraction for the purposes of paragraph 5, and

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Q = the amount or, as the case may be, the aggregate amount for the time being of any loan or loans which qualify under this Schedule; or

(b) the sum for the time being specified in sub-paragraph (5).

(8) In a case to which paragraph 15(3) or 16(3) (loans which qualify in part only) applies, the appropriate amount for the purposes of sub-paragraph (4) shall be the lower of—

(a) a sum representing for the time being the part of the loan applied for the purposes specified in paragraph 15(1) or (as the case may be) paragraph 16(1); or

(b) the sum for the time being specified in sub-paragraph (5).

(9) In the case of any loan to which paragraph 16(2)(k) (loan taken out and used for the purpose of adapting a dwelling for the special needs of a disabled person) applies the whole of the loan, to the extent that it remains unpaid, shall be disregarded in determining whether the amount for the time being specified in sub-paragraph (5) is exceeded.

[<sup>F660</sup>(10) Where in any case the amount for the time being specified for the purposes of sub-paragraph (5) is exceeded and there are two or more loans to be taken into account under either or both paragraphs 15 and 16, then the amount of eligible interest in respect of each of those loans to the extent that the loans remain outstanding shall be determined as if each loan had been reduced to a sum equal to the qualifying portion of that loan.]

[<sup>F660</sup>(11) For the purposes of sub-paragraph (10), the qualifying portion of a loan shall be determined by applying the following formula—

Where—

R = the amount for the time being specified for the purposes of sub-paragraph (4);

S = the amount of the outstanding loan to be taken into account;

T = the aggregate of all outstanding loans to be taken into account under paragraphs 15 and 16.]

#### Textual Amendments

**F658** Sch. 3 para. 11(1) omitted (12.12.1995) by virtue of [The Social Security \(Income Support, Claims and Payments and Adjudication\) Amendment Regulations 1995 \(S.I. 1995/2927\)](#), regs. 1(1), **5(8)(a)**

**F659** Words in Sch. 3 para. 11(3) substituted (12.12.1995) by [The Social Security \(Income Support, Claims and Payments and Adjudication\) Amendment Regulations 1995 \(S.I. 1995/2927\)](#), **regs. 1(1), 5(8)(b)**

**F660** Sch. 3 para. 11(10)(11) inserted (12.12.1995) by [The Social Security \(Income Support, Claims and Payments and Adjudication\) Amendment Regulations 1995 \(S.I. 1995/2927\)](#), regs. 1(1), **5(8)(c)**

#### Modifications etc. (not altering text)

**C31** Sch. 3 para. 11(5) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**

**C32** Sch. 3 para. 11(7)(a) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**

**C33** Sch. 3 para. 11(11) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**

#### The standard rate

**12.—(1)** The standard rate is the rate of interest applicable to a loan which qualifies under this Schedule and—

(a) except where sub-paragraph (2) applies, is [<sup>F661</sup>8.00 per cent.] per annum; or

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(b) where sub-paragraph (2) applies, shall equal the actual rate of interest charged on the loan on the day the housing costs first fall to be met.

(2) This sub-paragraph applies where the actual rate of interest charged on the loan which qualifies under this Schedule is less than 5 per cent. per annum on the day the housing costs first fall to be met and ceases to apply when the actual rate of interest on that loan is 5 per cent. per annum or higher.

(3) Where in a case to which sub-paragraph (2) applies, the actual rate of interest on the loan rises to 5 per cent. per annum or higher, the standard rate applicable on that loan shall be determined in accordance with sub-paragraph (1)(a).

<sup>F662</sup>(4) .....

**Textual Amendments**

**F661** Words in Sch. 3 para. 12(1)(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1995 \(S.I. 1995/3320\)](#), regs. 1(1), **2**

**F662** Sch. 3 para. 12(4) omitted (12.12.1995) by virtue of [The Social Security \(Income Support, Claims and Payments and Adjudication\) Amendment Regulations 1995 \(S.I. 1995/2927\)](#), regs. 1(1), **5(9)**

**Modifications etc. (not altering text)**

**C34** Sch. 3 para. 12(2)(3) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(12), **Sch. 8**

**Excessive Housing Costs**

**13.**—(1) Housing costs which, apart from this paragraph, fall to be met under this Schedule shall be met only to the extent specified in sub-paragraph (3) where—

- (a) the dwelling occupied as the home, excluding any part which is let, is larger than is required by the claimant and his family and any child or young person to whom regulation 16(4) applies (foster children) and any other non-dependants having regard, in particular, to suitable alternative accommodation occupied by a household of the same size; or
- (b) the immediate area in which the dwelling occupied as the home is located is more expensive than other areas in which suitable alternative accommodation exists; or
- (c) the outgoings of the dwelling occupied as the home which are met under paragraphs 5 to 17 are higher than the outgoings of suitable alternative accommodation in the area.

(2) For the purposes of heads (a) to (c) of sub-paragraph (1), no regard shall be had to the capital value of the dwelling occupied as the home.

(3) Subject to the following provisions of this paragraph, the amount of the loan which falls to be met shall be restricted and the excess over the amounts which the claimant would need to obtain suitable alternative accommodation shall not be allowed.

(4) Where, having regard to the relevant factors, it is not reasonable to expect the claimant and his family to seek alternative cheaper accommodation, no restriction shall be made under sub-paragraph (3).

(5) In sub-paragraph (4) “the relevant factors” are—

- (a) the availability of suitable accommodation and the level of housing costs in the area; and
- (b) the circumstances of the family including in particular the age and state of health of its members, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any

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child or young person who is a member of his family, or any child or young person who is not treated as part of his family by virtue of regulation 16(4) (foster children).

(6) Where sub-paragraph (4) does not apply and the claimant (or other member of the family) was able to meet the financial commitments for the dwelling occupied as the home when these were entered into, no restriction shall be made under this paragraph during the first 26 weeks of any period of entitlement to income support not during the next 26 weeks if and so long as the claimant uses his best endeavours to obtain cheaper accommodation or, as the case may be, no restriction shall be made under this paragraph on review during the 26 weeks from the date of the review nor during the next 26 weeks if and so long as the claimant uses his best endeavours.

(7) For the purposes of calculating any period of 26 weeks referred to in sub-paragraph (6), and for those purposes only, a person shall be treated as entitled to income support for any period of 12 weeks or less in respect of which he was not in receipt of income support and which fell immediately between periods in respect of which he was in receipt thereof.

(8) Any period in respect of which—

- (a) income support was paid to a person, and
- (b) it was subsequently determined on appeal or review that he was not entitled to income support for that period,

shall be treated for the purposes of sub-paragraph (7) as a period in respect of which he was not in receipt of income support.

(9) Heads (c) to (f) of sub-paragraph (1) of paragraph 14 shall apply to sub-paragraph (7) as they apply to paragraphs 6 and 8 but with the modification that the words “Subject to sub-paragraph (2)” were omitted and references to “the claimant” were references to the person mentioned in sub-paragraph (7).

### Linking rule

14.—(1) Subject to sub-paragraph (2), for the purposes of this Schedule—

- (a) a person shall be treated as being in receipt of income support during the following periods—
  - (i) any period in respect of which it was subsequently held, on appeal or review, that he was entitled to income support; and
  - (ii) any period of 12 weeks or less in respect of which he was not in receipt of income support and which fell immediately between periods in respect of which he was or was treated as being in receipt thereof or to which (i) above applies;
- (b) a person shall be treated as not being in receipt of income support during any period other than a period to which (a)(ii) above applies in respect of which it is subsequently held on appeal or review that he was not so entitled;
- (c) where—
  - (i) the claimant was a member of a couple or a polygamous marriage; and
  - (ii) his partner was, in respect of a past period, in receipt of income support for himself and the claimant; and
  - (iii) the claimant is no longer a member of that couple or polygamous marriage; and
  - (iv) the claimant made his claim for income support within twelve weeks of ceasing to be a member of that couple or polygamous marriage,

he shall be treated as having been in receipt of income support for the same period as his former partner had been or had been treated, for the purposes of this Schedule, as having been;

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- (d) where the claimant's partner's applicable amount was determined in accordance with paragraph 1(1) (single claimant) or paragraph 1(2) (lone parent) of Schedule 2 applicable amounts) in respect of a past period, provided that the claim was made within twelve weeks of the claimant and his partner becoming one of a couple or polygamous marriage, the claimant shall be treated as having been in receipt of income support for the same period as his partner had been or had been treated, for the purposes of this Schedule, as having been;
  - (e) where the claimant is a member of a couple or a polygamous marriage and his partner was, in respect of a past period, in receipt of income support for himself and the claimant, and the claimant has begun to receive income support as a result of an election by the members of the couple or polygamous marriage, he shall be treated as having been in receipt of income support for the same period as his partner had been or had been treated, for the purposes of this Schedule, as having been;
  - (f) where—
    - (i) the claimant was a member of a family of a person (not being a former partner) entitled to income support and at least one other member of that family was a child or young person; and
    - (ii) the claimant becomes a member of another family which includes that child or young person; and
    - (iii) the claimant made his claim for income support within 12 weeks of the date on which the person entitled to income support mentioned in (i) above ceased to be so entitled, the claimant shall be treated as being in receipt of income support for the same period as that person had been or had been treated, for the purposes of this Schedule, as having been.
- (2) Where a claimant, with the care of a child, has ceased to be in receipt of income support in consequence of the payment of child support maintenance under the Child Support Act 1991 and immediately before ceasing to be so in receipt an amount determined in accordance with paragraph 6(1)(a)(i) or paragraph 8(1)(a)(i) was applicable to him, then—
- (a) if the child support maintenance assessment concerned is terminated or replaced on review by a lower assessment in consequence of the coming into force on or after 18th April 1995 of regulations made under the Child Support Act 1991; or
  - (b) where the child support maintenance assessment concerned is an interim maintenance assessment and, in circumstances other than those referred to in head (a), it is terminated or replaced after termination by another interim maintenance assessment or by a maintenance assessment made in accordance with Part I of Schedule 1 to the Child Support Act 1991, in either case of a lower amount than the assessment concerned,
- sub-paragraph (1)(a)(ii) shall apply to him as if for the words "any period of 12 weeks or less" there were substituted the words "any period of 26 weeks or less".
- (3) For the purposes of this Schedule, where a claimant has ceased to be entitled to income support because he or his partner is participating in arrangements for training made under section 2 of the Employment and Training Act 1973 or attending a course at an employment rehabilitation centre established under that section, he shall be treated as if he had been in receipt of income support for the period during which he or his partner was participating in such arrangements or attending such a course.
- [<sup>F663</sup>(3A) Where, for the purposes of sub-paragraphs (1) and (3), a person is treated as being in receipt of income support, for a certain period, he shall be treated as being entitled to income support for the same period.]
- (4) For the purposes of this Schedule, sub-paragraph (5) applies where a person is not entitled to income support by reason only that he has—
- (a) capital exceeding £8,000; or

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- (b) income exceeding the applicable amount which applies in his case, or
  - (c) both capital exceeding £8,000 and income exceeding the applicable amount which applies in his case.
- (5) A person to whom sub-paragraph (4) applies shall be treated as entitled to income support throughout any period of not [<sup>F664</sup>more] than 39 weeks which comprises only days—
- (a) on which he is entitled to unemployment benefit, statutory sick pay or incapacity benefit; or
  - (b) on which he is, although not entitled to any of the benefits mentioned in head (a) above, entitled to be credited with earnings equal to the lower earnings limit for the time being in force in accordance with regulation 9 of the Social Security (Credits) Regulations 1975; or
  - (c) in respect of which the claimant is treated as being in receipt of income support.

[<sup>F665</sup>(5A) Subject to sub-paragraph (5B), a person to whom sub-paragraph (4) applies and who is either a person to whom paragraph 4 of Schedule 1 applies (persons with caring responsibilities not required to be available for employment) or a lone parent shall, for the purposes of this Schedule, be treated as entitled to income support throughout any period of not more than 39 weeks following the refusal of a claim for income support made by or on behalf of that person.]

[<sup>F665</sup>(5B) Sub-paragraph (5A) shall not apply in relation to a person mentioned in that sub-paragraph who, during the period referred to in that sub-paragraph—

- (a) is engaged in, or is treated as engaged in, remunerative work or whose partner is engaged in, or is treated as engaged in, remunerative work;
- (b) is treated as not available for employment by virtue of regulation 10(1)(h) (circumstances in which students are not treated as available for employment);
- (c) is temporarily absent from Great Britain, other than in the circumstances specified in regulation 4(2) and (3) (temporary absence from Great Britain).]

(6) In a case where—

- (a) [<sup>F666</sup>sub-paragraphs (5) and (5A) apply] solely by virtue of sub-paragraph (4)(b); and
- (b) the claimant’s income includes payments under a policy taken out to insure against the risk that the policy holder is unable to meet any loan or payment which qualifies under paragraphs 15 to 17,

[<sup>F667</sup>sub-paragraphs (5) and (5A)] shall have effect as if for the words “throughout any period of not [<sup>F668</sup>more] than 39 weeks” there shall be substituted the words “throughout any period that payments are made in accordance with the terms of the policy”.

<sup>F669</sup>(7) .....

(8) This sub-paragraph applies—

- (a) to a person who claims income support, or in respect of whom income support is claimed, and who—
  - (i) received payments under a policy of insurance taken out to insure against loss of employment, and those payments are exhausted; and
  - (ii) had a previous award of income support where the applicable amount included an amount by way of housing costs; and
- (b) where the period in respect of which the previous award of income support was payable ended not more than 26 weeks before the date the claim was made.

(9) Where sub-paragraph (8) applies, in determining—

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- (a) for the purposes of paragraph 6(1) whether a person has been [<sup>F670</sup>entitled to] income support for a continuous period of 26 weeks or more; or
- (b) for the purposes of paragraph 8(1) whether a claimant has been [<sup>F670</sup>entitled to] income support for a continuous period of 39 weeks or more,

any week falling between the date of the termination of the previous award and the date of the new claim shall be ignored.

#### Textual Amendments

- F663** Sch. 3 para. 14(3A) inserted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), 5(10)(a)
- F664** Word in Sch. 3 para. 14(5) substituted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), 5(10)(b)
- F665** Sch. 3 para. 14(5A)(5B) inserted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), 5(10)(c)
- F666** Words in Sch. 3 para. 14(6) substituted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), 5(10)(d)(i)
- F667** Words in Sch. 3 para. 14(6) substituted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), 5(10)(d)(ii)
- F668** Word in Sch. 3 para. 14(6) substituted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), 5(10)(d)(iii)
- F669** Sch. 3 para. 14(7) omitted (12.12.1995) by virtue of The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), 5(10)(e)
- F670** Words in Sch. 3 para. 14(9) substituted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), 5(10)(f)

#### Loans on residential property

15.—(1) A loan qualifies under this paragraph where the loan was taken out to defray monies applied for any of the following purposes—

- (a) acquiring an interest in the dwelling occupied as the home; or
- (b) paying off another loan to the extent that the other loan would have qualified under head (a) above had the loan not been paid off.

(2) For the purposes of this paragraph, references to a loan include also a reference to money borrowed under a hire purchase agreement for any purpose specified in heads (a) and (b) of subparagraph (1) above.

(3) Where a loan is applied only in part for the purposes specified in heads (a) and (b) of subparagraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

#### Loans for repairs and improvements to the dwelling occupied as the home

16.—(1) A loan qualifies under this paragraph where the loan was taken out, with or without security, for the purpose of—

- (a) carrying out repairs and improvements to the dwelling occupied as the home;
- (b) paying any service charge imposed to meet the cost of repairs and improvements to the dwelling occupied as the home;
- (c) paying off another loan to the extent that the other loan would have qualified under head (a) or (b) of this sub-paragraph had the loan not been paid off,

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and the loan was used for that purpose, or is used for that purpose within 6 months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case.

(2) In sub-paragraph (1) "repairs and improvements" means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling—

- (a) provision of a fixed bath, shower, wash basin, sink or lavatory, and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
- (b) repairs to existing heating systems;
- (c) damp proof measures;
- (d) provision of ventilation and natural lighting;
- (e) provision of drainage facilities;
- (f) provision of facilities for preparing and cooking food;
- (g) provision of insulation of the dwelling occupied as the home;
- (h) provision of electric lighting and sockets;
- (i) provision of storage facilities for fuel or refuse;
- (j) repairs of unsafe structural defects;
- (k) adapting a dwelling for the special needs of a disabled person; or
- (l) provision of separate sleeping accommodation for children of different sexes aged 10 or over who are part of the same family as the claimant.

(3) Where a loan is applied only in part for the purposes specified in sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

### **Other housing costs**

**17.—**(1) Subject to the deduction specified in sub-paragraph (2) and the reductions applicable in sub-paragraph (5), there shall be met under this paragraph the amounts, calculated on a weekly basis, in respect of the following housing costs—

- (a) payments by way of rent or ground rent relating to a long tenancy and, in Scotland, payments by way of feu duty;
- (b) service charges;
- (c) payments by way of rent charge within the meaning of section 1 of the Rent charges Act 1977;
- (d) payments under a co-ownership scheme;
- (e) payments under or relating to a tenancy or licence of a Crown tenant;
- (f) where the dwelling occupied as the home is a tent, payments in respect of the tent and the site on which it stands.

(2) Subject to sub-paragraph (3), the deductions to be made from the weekly amounts to be met under this paragraph are—

- (a) where the costs are inclusive of any of the items mentioned in paragraph 5(2) of Schedule 1 to the Housing Benefit (General) Regulations 1987 (payment in respect of fuel charges), the deductions prescribed in that paragraph unless the claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, in which case the estimated amount;
- (b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations 1987 (ineligible service



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charges) the amounts attributable to those ineligible service charges or where that amount is not separated from or separately identified within the housing costs to be met under this paragraph, such part of the payments made in respect of those housing costs which are fairly attributable to the provision of those ineligible services having regard to the costs of comparable services;

- (c) any amount for repairs and improvements, and for this purpose the expression “repairs and improvements” has the same meaning it has in paragraph 16(2).

(3) Where arrangements are made for the housing costs, which are met under this paragraph and which are normally paid for a period of 52 weeks, to be paid instead for a period of 53 weeks, or to be paid irregularly, or so that no such costs are payable or collected in certain periods, or so that the costs for different periods in the year are of different amounts, the weekly amount shall be the amount payable for the year divided by 52.

(4) Where the claimant or a member of his family—

- (a) pays for reasonable repairs or redecorations to be carried out to the dwelling they occupy; and
- (b) that work was not the responsibility of the claimant or any member of his family; and
- (c) in consequence of that work being done, the costs which are normally met under this paragraph are waived, then those costs shall, for a period not exceeding 8 weeks, be treated as payable.

(5) Where in England and Wales an amount calculated on a weekly basis in respect of housing costs specified in sub-paragraph (1)(e) (Crown tenants) includes water charges, that amount shall be reduced—

- (a) where the amount payable in respect of water charges is known, by that amount;
- (b) in any other case, by the amount which would be the likely weekly water charge had the property not been occupied by a Crown tenant.

### Non-dependant deductions

**18.—**(1) Subject to the following provisions of this paragraph, the following deductions from the amount to be met under the preceding paragraphs of this Schedule in respect of housing costs shall be made—

- (a) in respect of a non-dependant aged 18 or over who is engaged in any [<sup>F671</sup>remunerative] work <sup>F672</sup> ..., [<sup>F673</sup>£32.00;]
- (b) in respect of a non-dependant aged 18 or over to whom head (a) does not apply, [<sup>F674</sup>£6.00.]

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (1)(a) applies because he is in [<sup>F675</sup>remunerative] work, where the claimant satisfies the adjudication officer that the non-dependant’s gross weekly income is—

- (a) less than [<sup>F676</sup>£76.00] the deduction to be made under this paragraph shall be the deduction specified in sub-paragraph (1)(b);
- (b) not less than [<sup>F677</sup>£76.00 ]but less than [<sup>F677</sup>£114.00,] the deduction to be made under this paragraph shall be [<sup>F677</sup>£12.00;]
- (c) not less than [<sup>F678</sup>£114.00 ]but less than [<sup>F678</sup>£150.00,] the deduction to be made under this paragraph shall be [<sup>F678</sup>£16.00.]

(3) Only one deduction shall be made under this paragraph in respect of a couple or, as the case may be, the members of a polygamous marriage, and where, but for this sub-paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is

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higher than the amount (if any) that would fall to be deducted in respect of the other, or any other member, the higher amount shall be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of sub-paragraph (2), to be couple's or, as the case may be, all the members of the polygamous marriage's, joint weekly income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple of members of a polygamous marriage), the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the housing costs in respect of the dwelling occupied as the home payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying the dwelling occupied as the home of the claimant, if the claimant or any partner of his is—

- (a) blind or treated as blind by virtue of paragraph 12 of Schedule 2 (additional condition for the higher pensioner and disability premiums); or
- (b) receiving in respect of himself either—
  - (i) an attendance allowance; or
  - (ii) the care component of the disability living allowance.

(7) No deduction shall be made in respect of a non-dependant—

- (a) if, although he resides with the claimant, it appears to the adjudication officer that the dwelling occupied as his home is normally elsewhere; or
- (b) if he is in receipt of a training allowance paid in connection with a Youth Training Scheme established under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990; or
- (c) if he is a full-time student during a period of study or, if he is not in remunerative work, during a recognised summer vacation appropriate to his course; or
- (d) if he is aged under 25 and in receipt of income support; or
- (e) in respect of whom a deduction in the calculation of a rent rebate or allowance falls to be made under regulation 63 of the Housing Benefit (General) Regulations 1987 (non-dependant deductions); or
- (f) to whom, but for paragraph (2C) of regulation 3 (definition of non-dependant) paragraph (2B) of that regulation would apply; or
- (g) if he is not residing with the claimant because he has been a patient for a period in excess of six weeks, or is a prisoner, and for these purposes—
  - (i) "patient" and "prisoner" have the meanings given in regulation 21(3) (special cases), and
  - (ii) the period of six weeks shall be calculated by reference to paragraph (2) of that regulation as if that paragraph applied in his case.

(8) In the case of a non-dependant to whom sub-paragraph (2) applies because he is in [<sup>F679</sup>remunerative] work, there shall be disregarded from his gross income—

- (a) any attendance allowance or disability living allowance received by him;
- (b) any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments)(No.2) Trust, the Fund, the Eileen Trust or the Independent Living Funds which, had his income fallen to be calculated under regulation 40 (calculation of income other than earnings), would have been disregarded under paragraph 21 of Schedule 9 (income in kind); and

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- (c) any payment which, had his income fallen to be calculated under regulation 40 would have been disregarded under paragraph 39 of Schedule 9 (payments made under certain trusts and certain other payments).

#### Textual Amendments

- F671** Word in Sch. 3 para. 18(1) inserted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), **5(11)(a)(i)**
- F672** Words in Sch. 3 para. 18(1) omitted (12.12.1995) by virtue of The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), **5(11)(a)(ii)**
- F673** Sum in Sch. 3 para. 18(1)(a) substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by The Social Security Benefits Up-rating Order 1996 (S.I. 1996/599), arts. 1(2)(g), **18(6)(a)**
- F674** Sum in Sch. 3 para. 18(1)(b) substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by The Social Security Benefits Up-rating Order 1996 (S.I. 1996/599), arts. 1(2)(g), **18(6)(b)**
- F675** Word in Sch. 3 para. 18(2) inserted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), **5(11)(b)**
- F676** Sum in Sch. 3 para. 18(2)(a) substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by The Social Security Benefits Up-rating Order 1996 (S.I. 1996/599), arts. 1(2)(g), **18(7)(a)**
- F677** Sums in Sch. 3 para. 18(2)(b) substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by The Social Security Benefits Up-rating Order 1996 (S.I. 1996/599), arts. 1(2)(g), **18(7)(b)**
- F678** Sums in Sch. 3 para. 18(2)(c) substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by The Social Security Benefits Up-rating Order 1996 (S.I. 1996/599), arts. 1(2)(g), **18(7)(c)**
- F679** Word in Sch. 3 para. 18(8) inserted (12.12.1995) by The Social Security (Income Support, Claims and Payments and Adjudication) Amendment Regulations 1995 (S.I. 1995/2927), regs. 1(1), **5(11)(c)**

#### Rounding of fractions

19. Where any calculation made under this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.]

[<sup>F680</sup>SCHEDULE 3A

Regulations 17(1)(g), 18(1)(h) and 71(1)(a)(v) and (d)(iv)

PROTECTED SUM

#### Textual Amendments

- F680** Sch. 3A inserted (10.4.1989) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), reg. 1(1)(c), Sch. 1 para. 14, **Sch. 2** (with reg. 28)

#### Interpretation

1.—(1) In this Schedule—

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[<sup>F681</sup>“eligible housing benefit” means—

- (a) for the period of 7 consecutive days beginning on 3rd April 1989, the amount of housing benefit to which the claimant or his partner was entitled in that period which relates to the board and lodging accommodation normally occupied as the home by him or, if he has a partner, by him and his partner;
- (b) for the period of 7 consecutive days beginning on 10th April 1989 or, in a case to which paragraph 7(7)(b) applies, for the period of 7 consecutive days referred to in that paragraph, the amount of the claimant’s or his partner’s maximum housing benefit determined in accordance with regulation 61 of the Housing Benefit (General) Regulations 1987 (maximum housing benefit) which relates to that accommodation;]

“first week” means the benefit week beginning on a day during the period of 7 days commencing on 3rd April 1989;

“income support” includes any sum payable under Part II of the Income Support (Transitional) Regulations 1987;

“protected sum” means the amount applicable under this Schedule [<sup>F682</sup>to a claimant who in the first week is living in board and lodging accommodation or who or whose partner is temporarily absent in that week from that accommodation];

[<sup>F683</sup>“protected total” means—

- (a) the total of the claimant’s applicable amount under regulation 20 (applicable amounts for persons in board and lodging accommodation) in the first week or, in a case to which paragraph 7(7) applies, if the protected person or any partner of his is temporarily absent from his accommodation in that week, the amount which would have fallen to be calculated under that regulation for that week as if there had been no temporary absence; and
- (b) the amount of any eligible housing benefit for the period of 7 consecutive days beginning 3rd April 1989;]

“relevant provisions” means—

- (a) regulation 17(1)(a) to (f) (applicable amounts);
- (b) regulation 18(1)(a) to (g) (polygamous marriages);
- (c) regulation 71(1)(a)(i) to (iv) (urgent cases);
- (d) regulation 71(1)(d)(i) to (iii);
- (e) in relation to a case to which paragraph 17(b)(ii) or (c)(i) of Schedule 7 (persons from abroad) applies, the regulations specified in that paragraph but as if the reference to regulation 17(1)(g) in that paragraph were omitted; or
- (f) in relation to a case to which paragraph 17(d)(i) of that Schedule applies, the regulations specified in that paragraph but as if the reference to regulation 18 were a reference to regulation 18(1)(a) to (g) only;

“second week” means the benefit week beginning on a day during the period of 7 days commencing on 10th April 1989.

[<sup>F684</sup>“third week” means the benefit week beginning on a day during the period of 7 days commencing on 17th April 1989.]

(2) For the purposes of this Schedule—

- (a) in determining a claimant’s applicable amount in his first week, second week or any subsequent benefit week no account shall be taken of any reduction under regulation 22 (reduction in certain cases of unemployment benefit disqualification);

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- (b) [<sup>F685</sup>except in so far as it relates to any temporary absence to which paragraph 7(7) refers,] where a change of circumstances takes effect in the claimant's second week which, had it taken effect in the first week, would have resulted in a lesser applicable amount in respect of that week, his applicable amount in the first week shall be determined as if the change of circumstances had taken effect in that week.

#### Textual Amendments

- F681** Words in Sch. 3A para. 1(1) substituted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **7(a)(i)**
- F682** Words in Sch. 3A para. 1(1) inserted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **7(a)(ii)**
- F683** Words in Sch. 3A para. 1(1) substituted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **7(a)(iii)**
- F684** Words in Sch. 3A para. 1(1) inserted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **7(a)(iv)**
- F685** Words in Sch. 3A para. 1(2)(b) inserted (10.4.1989) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(b), **19(b)**

#### Protected sum

2.—(1) [<sup>F686</sup>Subject to sub-paragraph (2) and the following paragraphs] of this Schedule, where the protected total of a claimant is more than—

- (a) his applicable amount in the second week determined in accordance with the relevant provisions; and
- (b) any eligible housing benefit for the period [<sup>F687</sup>of 7 consecutive days] beginning 10th April 1989,

the protected sum applicable to the claimant shall be an amount equal to the difference.

[<sup>F688</sup>(2) Where—

- (a) in the second week a claimant's income calculated in accordance with Part V or, as the case may be, VI exceeds the aggregate of his applicable amount determined in accordance with the relevant provisions and X; and
- (b) the amount of income support to which he is entitled in the first week is more than the amount of housing benefit to which he would, but for this sub-paragraph, have been entitled in the period of 7 consecutive days beginning on 10th April 1989,

the protected sum applicable to the claimant shall, subject to sub-paragraph (3), be an amount equal to X+Y+10 pence.

(3) Where a claimant or his partner is, or both are, entitled in the first, second and third weeks to a relevant social security benefit or to more than one such benefit and consequent upon the Social Security Benefits Up-rating Order 1989 the claimant or his partner is, or both are, entitled to an increase in any one or more of those benefits in the third week, the protected sum under sub-paragraph (2) shall be increased by an amount equal to the difference between—

- (a) the amount of benefit or aggregate amount of those benefits to which the claimant or his partner is, or both are, entitled in the third week; and, if less,
- (b) the amount of benefit or aggregate amount of those benefits to which the claimant or his partner is, or both are, entitled in the second week.

(4) In this paragraph—

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“X” means the sum which, but for sub-paragraph (2), would be the protected sum applicable under sub-paragraph (1);

“Y” means the amount of the excess to which sub-paragraph (2)(a) refers;

“relevant social security benefit” means—

- (a) child benefit;
- (b) any benefit under the Social Security Act;
- (c) war disablement pension;
- (d) war widow’s pension;
- (e) any payment under a scheme made under the Industrial Injuries and Diseases (Old Cases) Act 1975;
- (f) any concessionary payment.]

#### Textual Amendments

**F686** Words in Sch. 3A para. 2 substituted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **7(b)(i)**

**F687** Words in Sch. 3A para. 2(b) inserted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **7(b)(ii)**

**F688** Sch. 3A para. 2(2)-(4) inserted (10.4.1989) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), **regs. 1(1), 1(1)(b), 7(c)**

#### Persons not entitled to a protected sum

**3.—(1)** A protected sum shall not be applicable to a claimant where in the first week—

- (a) he is aged under 25 and, if he is a member of a couple, his partner is also aged under 25; and
- (b) he is required to be available for employment for the purposes of section 20(3)(d)(i) of the Act; and
- (c) he was not in receipt of supplementary benefit as a boarder on 24th November 1985; and
- (d) none of the conditions in paragraph 16(4) of Schedule 5 (applicable amounts of persons in board and lodging accommodation or hostels) applies to him.

[  
<sup>F689</sup>(2) A protected sum shall not be applicable to a claimant, [<sup>F690</sup>unless he, or any partner of his, is entitled to housing benefit for the period of 7 consecutive days beginning 10th April 1989 or, where paragraph 7(7)(b) applies, for the period of 7 consecutive days referred to in that paragraph in respect of] the board and lodging accommodation normally occupied as the home by him, or if he has a partner, by him and his partner.]

[  
<sup>F689</sup>(3) Subject to paragraph 7, a protected sum shall not be applicable to a claimant where he changes or vacates his accommodation during the period of 7 consecutive days beginning 10th April 1989.]

#### Textual Amendments

**F689** Sch. 3A para. 3(2)(3) added (10.4.1989) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(b), **19(c)**

**F690** Words in Sch. 3A para. 3(2) substituted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **7(d)**

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## Period of application

4. Subject to paragraph 7, the protected sum shall not be applicable to a claimant for more than—
- (a) in the case of a claimant who is a member of a family and that family includes a child or young person and during the first week that family was in accommodation not provided or secured by a local authority under section 63 or 65(2) or (3)(a) of the Housing Act 1985 or section 2 of the Housing (Scotland) Act 1987, a period of 52 weeks beginning with the second week;
  - (b) in any other case, a period of 13 weeks beginning with the second week.

## Reduction of protected sum

5.—(1) Subject to [<sup>F691</sup>sub-paragraphs (2) to (6)], the protected sum shall be reduced by the amount of any increase, in a benefit week subsequent to the second week, in the claimant's applicable amount determined in accordance with the relevant provisions.

(2) Where regulation 22 (reduction in certain cases of unemployment benefit disqualification) [<sup>F692</sup>or regulation 21A (reductions in certain cases of failure to attend courses)] ceases to apply to a claimant and as a result his applicable amount increases no account shall be taken of that increase.

[<sup>F693</sup>(3) Where by virtue of the coming into force of regulation 5 of the Income Support (General) Amendment Regulations 1989 the claimant's applicable amount increases in his benefit week beginning on a day during the period of 7 days commencing on 9th October 1989, no account shall be taken of that increase.]

[<sup>F694</sup>(4) Where a claimant's applicable amount increases because a child or young person mentioned in paragraph (5)(c) of regulation 16 (circumstances in which a person is treated or not treated as a member of the household) is treated as a member of the claimant's household under paragraph (6) of that regulation, the claimant's protected sum shall not be reduced by the amount of that increase unless the child or young person has been treated as a member of the household for a continuous period which exceeds 8 weeks.]

[<sup>F695</sup>(5) Where by virtue of the coming into force of regulation 15(a), (b) or (c) of the Income Support (General) Amendment No. 4 Regulations 1991 a claimant's applicable amount increases in his benefit week beginning on a day during the period of 7 days commencing on 1st October 1991, no account shall be taken of that increase.]

[<sup>F696</sup>(6) Where by virtue of the coming into force of regulation 3(1) and (2) of the Income-Related Benefits Amendment Regulations 1992 a claimant's applicable amount increases in his benefit week beginning on a day during the period of 7 days beginning on 5th October 1992, no account shall be taken of that increase.]

### Textual Amendments

**F691** Words in Sch. 3A para. 5(1) substituted (coming into force in accordance with reg. 2(2) of the amending S.I.) by [The Income-Related Benefits Amendment Regulations 1992 \(S.I. 1992/1326\)](#), regs. 2(2), **3(3)(a)**

**F692** Words in Sch. 3A para. 5(2) inserted (17.12.1990) by [The Income Support \(General and Transitional\) Amendment Regulations 1990\(S.I. 1990/2324\)](#), regs. 1(1), **4**

**F693** Sch. 3A para. 5(3) added (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **7(e)(ii)**

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**F694** Sch. 3A para. 5(4) added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **19(b)**

**F695** Sch. 3A para. 5(5) added (1.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(b), **16(b)** (with reg. 1(2))

**F696** Sch. 3A para. 5(6) added (coming into force in accordance with reg. 2(2) of the amending S.I.) by [The Income-Related Benefits Amendment Regulations 1992 \(S.I. 1992/1326\)](#), regs. 2(2), **3(3)(b)**

### Termination of protected sum

6. Subject to paragraph 7, the protected sum shall cease to be applicable if—
- (a) that amount is reduced to nil under paragraph 5; or
  - (b) the claimant changes or [<sup>F697</sup>vacates] his accommodation; or
  - (c) the claimant ceases to be entitled to income support.

### Textual Amendments

**F697** Word in Sch. 3A para. 6(b) substituted (10.4.1989) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(b), **19(d)**

### Protected persons

7.—(1) Subject to sub-paragraph (2), for the purposes of this paragraph a protected person is a claimant, where—

- (a) in respect of the first week he is entitled to an increase under paragraph 7 of Schedule 5 (applicable amounts of persons in board and lodging accommodation or hostels) because either he or, if he is one of a couple or a member of a polygamous marriage, he or his partner satisfies any of the conditions in paragraph 8 of that Schedule; or
- (b) in the first week the claimant or, if he has a partner, either he or his partner—
  - (i) is in need of personal care by reason of [<sup>F698</sup>old age,] mental or physical disablement, mental illness, or dependence on alcohol or drugs; and
  - (ii) is receiving both board and personal care in accommodation other than a residential care home or nursing home or residential accommodation within the meaning of regulation 21(3) (special cases)<sup>F699</sup> ...; and
  - (iii) is in accommodation which he entered under arrangements for his personal care made by a statutory authority or a voluntary or charitable body and those arrangements are being supervised on a continuing basis by that authority or body; or
- (c) he or, if he has a partner, either he or his partner but for his temporary absence from his accommodation for a period not exceeding 13 weeks, which includes the first week, would have satisfied (a) or (b) above.

(2) A claimant is not a protected person if he or, if he has a partner, he or his partner, in the first week, is temporarily living in board and lodging accommodation and that accommodation is not the accommodation normally occupied as the home.

(3) Paragraph 4 shall not apply to a protected person.

(4) Paragraph 6(b) shall not apply to a protected person if:

- (a) he moves to accommodation where he satisfies conditions (i) to (iii) of sub-paragraph (1) (b); or
- (b) he becomes a patient within the meaning of regulation 21(3); or



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- (c) on his ceasing to be a patient within the meaning of regulation 21(3), either he returns to the accommodation which he occupied immediately before he became a patient, or he moves to other accommodation where he satisfies conditions [<sup>F700</sup>(i) to (iii)] of sub-paragraph (1)(b); or
  - (d) in a case to which sub-paragraph (6) applies, on his becoming re-entitled to income support, he is either in the accommodation which he occupied immediately before he ceased to be entitled to income support, or in accommodation where he satisfies conditions (i) to (iii) of sub-paragraph (1)(b).
- [<sup>F701</sup>(5) Except where sub-paragraph (7) applies, where a protected sum was applicable to a protected person immediately before he or any partner of his became a patient within the meaning of regulation 21(3) for a period of 14 weeks or less, he shall, subject to sub-paragraph (4)(c), on his or, as the case may be, his partner's ceasing to be a patient, be entitled to a protected sum equal to—
- (a) the amount by which his protected total exceeds his applicable amount determined in accordance with the relevant provisions in the first benefit week in which his applicable amount ceases to be determined under paragraph 1 of Schedule 7 and either—
    - (i) any eligible housing benefit for the period of 7 consecutive days beginning on 10th April 1989; or, if greater,
    - (ii) in a case where sub-paragraph (7)(b) applied, any eligible housing benefit for the period of 7 consecutive days referred to in that sub-paragraph; or
  - (b) the amount of the protected sum to which he was entitled in the immediately preceding benefit week,
- whichever is the lower.
- (6) Paragraph 6(c) shall not apply to a protected person who has ceased to be entitled to income support for [<sup>F702</sup>a period not exceeding the permitted period determined in accordance with regulation 3A (permitted period)]—
- (a) if immediately before he ceased to be so entitled a protected sum was applicable to him; and
  - (b) except where sub-paragraph (7) applies, if during that period the protected person becomes re-entitled, or would by virtue of this sub-paragraph be re-entitled, to income support he shall, subject to sub-paragraph (4)(d), be entitled to a protected sum equal to—
    - (i) the amount by which his protected total exceeds his applicable amount determined in accordance with the relevant provisions in the first benefit week in which he becomes so re-entitled and either any eligible housing benefit for the period of 7 consecutive days beginning 10th April 1989 or, if greater, in a case to which sub-paragraph (7)(b) applied, any eligible housing benefit for the period of 7 consecutive days referred to in that sub-paragraph; or
    - (ii) the amount of the protected sum to which he was previously entitled,
- whichever is the lower.
- (7) Where a protected person or any partner of his is temporarily absent from his accommodation for a period not exceeding 13 weeks which includes the first or second week (or both)—
- (a) in a case where a protected sum was applicable to the protected person immediately before his or, as the case may be, his partner's return to that accommodation and the full charge was made for the accommodation during the temporary absence, on the protected person's or, as the case may be, his partner's return to that accommodation, the protected person shall be entitled to a protected sum equal to—
    - (i) the amount by which his protected total exceeds his applicable amount determined in accordance with the relevant provisions in the first complete benefit week after his

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or, as the case may be, his partner's return to that accommodation and any eligible housing benefit for the period of 7 consecutive days beginning 10th April 1989; or

- (ii) the amount of the protected sum which was applicable to him in the immediately preceding benefit week,

whichever is the lower;

- (b) in a case where—

- (i) a protected sum has not at any time been applicable to the protected person; or
- (ii) immediately before the protected person's or, as the case may be, his partner's return to that accommodation a protected sum was applicable but a reduced charge was made for the accommodation during the temporary absence,

the protected person on his or, as the case may be, his partner's return to that accommodation shall, subject to sub-paragraph (8), be entitled to a protected sum equal to the amount by which his protected total exceeds his applicable amount determined in accordance with the relevant provisions in the first complete benefit week after his or, as the case may be, his partner's return to that accommodation and the amount of eligible housing benefit for the period of 7 consecutive days beginning on the date determined in accordance with regulation 65 or, as the case may be, 68(2) of the Housing Benefit (General) Regulations 1987 (date on which entitlement is to commence or change of circumstances is to take effect) following that person's return to that accommodation.

- (8) Where, in a case to which sub-paragraph (7)(b)(i) applies—

- (a) in the first complete benefit week after the protected person's or, as the case may be, his partner's return to his accommodation the protected person's income calculated in accordance with Part V or, as the case may be, VI exceeds the aggregate of his applicable amount determined in accordance with the relevant provisions and X; and
- (b) the amount of income support to which he was entitled in the first week is more than the amount of housing benefit to which he would, but for this sub-paragraph, have been entitled in the period of 7 consecutive days beginning on the date determined in accordance with regulation 65 or, as the case may be, 68(2) of the Housing Benefit (General) Regulations 1987 following his or, as the case may be, his partner's return to that accommodation,

the protected sum applicable shall, subject to sub-paragraph (9), be an amount equal to  $X+Y+10$  pence.

(9) Where the protected person or, as the case may be, his partner returns to the accommodation in the second week and he or his partner is, or both are, entitled in the first, second and third weeks to a relevant social security benefit or to more than one such benefit and consequent upon the Social Security Benefits Up-rating Order 1989 he or his partner is, or both are, entitled to an increase in any one or more of those benefits in the third week, the protected sum under sub-paragraph (8) shall be increased by an amount equal to the difference between—

- (a) the amount of benefit or aggregate amount of those benefits to which the protected person or his partner is, or both are, entitled in the third week; and, if less,
- (b) the amount of benefit or aggregate amount of those benefits to which the protected person or his partner is, or both are, entitled in the second week.

- (10) In sub-paragraph (8)—

“X” means the sum which, but for sub-paragraph (8), would be the protected sum applicable in a case to which sub-paragraph (7)(b)(i) applies;

“Y” means the amount of the excess to which sub-paragraph (8)(a) refers;

“relevant social security benefit” has the same meaning as in paragraph 3(4).]]

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### Textual Amendments

- F698** Words in Sch. 3A para. 7(1)(b)(i) inserted (10.4.1989) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(b), **19(e)**
- F699** Words in Sch. 3A para. 7(1)(b)(ii) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 11**
- F700** Words in Sch. 3A para. 7(4)(c) substituted (10.4.1989) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(b), **19(f)**
- F701** Sch. 3A para. 7(5)-(10) substituted for para. 7(5)-(7) (10.4.1989) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), **regs. 1(1)**, 1(1)(b), 7(f)
- F702** Words in Sch. 3A para. 7(6) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **8**

<sup>F703</sup>SCHEDULE 3B

Regulations 17(1)(g), 18(1)(h) and 71(1)  
(a)(v) and (d)(iv)

PROTECTED SUM

### Textual Amendments

- F703** Sch. 3B inserted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), Sch. 1 para. 18, **Sch. 2**

## Interpretation

1.—(1) In this Schedule—

“eligible housing benefit” means—

- (a) for the period of 7 consecutive days beginning on 2nd October 1989, the amount of housing benefit to which the claimant or his partner was entitled in that period which relates to the hostel normally occupied as the home by him or, if he has a partner, by him and his partner;
- (b) for the period of 7 consecutive days beginning on 9th October 1989 or, in a case to which paragraph 6(4)(b) applies, for the period of 7 consecutive days referred to in that paragraph, the amount of the claimant’s or his partner’s maximum housing benefit determined in accordance with regulation 61 of the Housing Benefit (General) Regulations 1987 (maximum housing benefit) which relates to that accommodation.

“first week” means the benefit week beginning on a day during the period of 7 days commencing on 2nd October 1989;

“hostel” means any establishment which immediately before the commencement of this Schedule was a hostel within the meaning of regulation 20(2) (applicable amounts for persons in hostels);

“income support” includes any sum payable under Part II of the Income Support (Transitional) Regulations 1987;

“March benefit week” means the benefit week beginning on a day during the period of 7 consecutive days beginning 20th March 1989;

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“protected sum” means the amount applicable under this Schedule to a claimant who in the first week is living in a hostel or who or whose partner is temporarily absent in that week from that accommodation;

“protected total” means—

- (a) the total of the claimant’s applicable amount under regulation 20 in the first week or, <sup>F704</sup>... if the claimant or any partner of his is temporarily absent from his accommodation [<sup>F705</sup>for a period not exceeding 14 weeks which includes that week], the amount which would have fallen to be calculated under that regulation for that week as if there had been no temporary absence; and
- (b) the amount of any eligible housing benefit for the period of 7 consecutive days beginning 2nd October 1989;

“relevant benefit week” means the benefit week beginning on a day during the period of 7 days commencing on 9th April 1990;

“relevant provisions” means—

- (a) regulation 17(1)(a) to (f) (applicable amounts);
- (b) regulation 18(1)(a) to (g) (polygamous marriages);
- (c) regulation 71(1)(a)(i) to (iv) (urgent cases);
- (d) regulation 71(1)(d)(i) to (iii);
- (dd) [<sup>F706</sup>paragraph 13 of Schedule 7 (persons in residential accommodation);]
- (e) in relation to a case to which paragraph 17(b)(ii) or (c)(i) of Schedule 7 (persons from abroad) applies, the regulations specified in that paragraph but as if the reference to regulation 17(1)(g) in that paragraph were omitted; or
- (f) in relation to a case to which paragraph 17(d)(i) of that Schedule applies, the regulations specified in that paragraph but as if the reference to regulation 18 were a reference to regulation 18(1)(a) to (g) only;

“second week” means the benefit week beginning on a day during the period of 7 days commencing on 9th October 1989.

(2) For the purposes of this Schedule—

- (a) in determining a claimant’s applicable amount in his first week, second week or any subsequent benefit week no account shall be taken of any reduction under regulation 22 (reduction in certain cases of unemployment benefit disqualification);
- (b) except in so far as it relates to any temporary absence to which paragraph 6(4) refers, where a change of circumstances takes effect in the claimant’s second week which, had it taken effect in the first week, would have resulted in a lesser applicable amount in respect of that week, his applicable amount in the first week shall be determined as if the change of circumstances had taken effect in that week.

#### Textual Amendments

**F704** Words in Sch. 3B para. 1(1) omitted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(b), [9\(a\)\(i\)](#)

**F705** Words in Sch. 3B para. 1(1) substituted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(b), [9\(a\)\(i\)](#)

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**F706** Words in Sch. 3B para. 1(1) inserted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by The Income Support (General) Amendment No. 3 Regulations 1989 (S.I. 1989/1678), regs. 1(1)(b), 9(a)(ii)

### Protected sum

2.—(1) Subject to the following provisions of this paragraph and the following paragraphs of this Schedule, where the protected total of a claimant is more than—

- (a) his applicable amount in the second week determined in accordance with the relevant provisions less the amount of any increase consequent on the coming into force of regulation 5 of the Income Support (General) Amendment Regulations 1989; and
- (b) any eligible housing benefit for the period of 7 consecutive days beginning 9th October 1989,

the protected sum applicable to the claimant shall be an amount equal to the difference.

(2) Where—

- (a) in the second week a claimant's income calculated in accordance with Part V or, as the case may be, VI exceeds the aggregate of his applicable amount determined in accordance with the relevant provisions and X; and
- (b) the amount of income support to which he is entitled in the first week is more than the amount of housing benefit to which he would, but for this sub-paragraph, have been entitled in the period of 7 consecutive days beginning on 9th October 1989,

the protected sum applicable to the claimant shall be an amount equal to X+Y+10 pence.

(3) In sub-paragraph (2)—

“X” means the sum which, but for sub-paragraph (2), would be the protected sum applicable under sub-paragraph (1);

“Y” means the amount of the excess to which sub-paragraph (2)(a) refers.

(4) For the period beginning with the claimant's relevant benefit week the protected sum applicable to the claimant shall, subject to sub-paragraph (6) and the following paragraphs of this Schedule, be—

(a) the total of—

- (i) the amount of the allowance for personal expenses for the claimant or, if he is a member of a family, for him and for each member of his family in the first week determined, or which, but for any temporary absence, would have been determined, in accordance with paragraph 11 of Schedule 5 as then in force;
- (ii) [<sup>F707</sup>subject to sub-paragraph (7)] the amount of any increase for meals in the first week determined, or which, but for any temporary absence, would have been determined, in accordance with paragraph 2 of that Schedule; and
- (iii) the amount or, if he is a member of a family, the aggregate of the amounts determined in accordance with sub-paragraph (5),

less the aggregate of his applicable amount in the second week determined, or which, but for any temporary absence, would have been determined, in accordance with the relevant provisions and, where applicable, the amount of any reduction in the protected sum made by virtue of paragraph 4 in a benefit week occurring before the relevant benefit week; or

- (b) the amount of the protected sum which was applicable to him in the immediately preceding benefit week,

whichever is the lower.

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(5) For the purposes of sub-paragraph (4)(a), where in the first week the accommodation charge makes or, but for any temporary absence, would have made, provision or no provision for meals, as respects each person an amount shall be determined as follows—

- (a) in a case where the provision is for at least three meals a day—
  - (i) for the claimant, £17.20;
  - (ii) for a member of his family aged 16 or over, £12.50;
  - (iii) for a member of his family aged less than 16, £6.25;
- (b) except where head (c) applies, in a case where the provision is for less than three meals a day—
  - (i) for the claimant, £13.85;
  - (ii) for a member of his family aged 16 or over, £8.30;
  - (iii) for a member of his family aged less than 16, £4.15;
- (c) in a case where the provision is for breakfast only—
  - (i) for the claimant, £7.05;
  - (ii) for a member of his family, £1.50;
- (d) in a case where there is no provision for meals, for the claimant or, if he is a member of a family, for the claimant and for the members of his family for whom there is no such provision, £5.55;

(6) Where in the relevant benefit week the claimant is in, or only temporarily absent from, residential accommodation, the protected sum applicable to the claimant for the period beginning with that week shall<sup>F708</sup>, subject to the following paragraphs of this Schedule,] be—

- (a) equal to the difference between—
  - (i) the amount of the allowance for personal expenses for the claimant or, if he is a member of a family, for him and for each member of his family in the first week determined, or which, but for any temporary absence, would have been determined, in accordance with paragraph 11 of Schedule 5 as then in force; and
  - (ii) the amount of the allowance for personal expenses for the claimant or, if he is a member of a family, for him and for each member of his family in the second week determined, or which, but for any temporary absence would have been determined, under paragraph 13 of Schedule 7 (persons in residential accommodation),
 less, where applicable, the amount of any reduction in the protected sum made by virtue of paragraph 4 in a benefit week occurring before the relevant benefit week; or
- (b) the amount of the protected sum which was applicable to him in the immediately preceding benefit week,

whichever is the lower.

[<sup>F709</sup>(7) In the case of a member of a family who in the first week is a child aged less than 11, the amount of any increase for meals under sub-paragraph (4)(a)(ii) shall be either—

- (a) the amount of any such increase in the first week determined, or which, but for any temporary absence, would have been determined, in accordance with paragraph 2 of Schedule 5 as then in force; or
- (b) £17.65,

whichever is the lower.]

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### Textual Amendments

- F707** Words in Sch. 3B para. 2(4)(a)(ii) inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), [20\(a\)\(i\)](#)
- F708** Words in Sch. 3B para. 2(6) inserted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(b), [9\(b\)](#)
- F709** Sch. 3B para. 2(7) added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), [20\(a\)\(ii\)](#)

### Persons not entitled to a protected sum

**3.—(1)** Subject to paragraph 6, a protected sum shall not be applicable to a claimant where he changes or vacates his hostel during the period of 7 consecutive days beginning 9th October 1989.

(2) Except where regulation 8(2)(b) of the Housing Benefit (General) Regulations 1987 (eligible housing costs) applies, a protected sum shall not be applicable to a claimant unless he, or any partner of his, is entitled to housing benefit for the period of 7 consecutive days beginning 9th October 1989 or, where paragraph 6(4)(b) applies, for the period of 7 consecutive days referred to in that paragraph, in respect of the hostel normally occupied as the home by him, or if he has a partner, by him and his partner.

(3) A protected sum shall not be applicable to a claimant where—

- (a) he has been or would, but for any temporary absence, have been in the same accommodation in both the March benefit week and the second week, and—
- (i) his applicable amount in both those weeks fell or would have fallen, but for any temporary absence, to be determined under paragraph 13(1) of Schedule 7; or
- (ii) his applicable amount in the second week fell or would have fallen, but for any temporary absence, to be determined under that paragraph and would also have fallen to be so determined in the March benefit week had his stay in that accommodation been other than temporary; or
- (b) his applicable amount in the second week fell or would have fallen, but for any temporary absence, to be determined under that paragraph and would also have fallen to be so determined in the March benefit week had he been in the same accommodation in that week and had his stay in that accommodation been other than temporary;<sup>F710</sup> or
- (c) his applicable amount in the first week fell or would have fallen, but for any temporary absence, to be determined under regulation 20 but would not have fallen to be so determined in the March benefit week had he been in the same accommodation in that week and had his stay in that accommodation been other than temporary.]

<sup>F711</sup>(4) For the purposes of sub-paragraph (3), where—

- (a) a claimant's applicable amount in respect of the March benefit week has been determined under paragraph 13(1) of Schedule 7 and it is subsequently determined on review that it fell to be determined under regulation 20, he shall, notwithstanding that review, be treated as if his applicable amount fell to be determined under that paragraph;
- (b) a claimant has been temporarily absent from his accommodation in the March benefit week and immediately before the period of temporary absence his applicable amount was determined under paragraph 13(1) of Schedule 7, he shall be treated as if his applicable amount would have fallen to be determined under that paragraph during the period of temporary absence notwithstanding that it is subsequently determined on review

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that immediately before the period of temporary absence it fell to be determined under regulation 20;

- (c) a claimant has entered his accommodation after the March benefit week, he shall be treated as if his applicable amount, had he been in that accommodation in the March benefit week, would not have fallen to be determined under regulation 20 in that week if the applicable amounts of other claimants in that accommodation in that week were determined otherwise than under that regulation notwithstanding that it is subsequently determined on review that they fell to be determined under regulation 20.]

#### Textual Amendments

**F710** Sch. 3B para. 3(3)(c) and word added (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(b), **9(c)(i)**

**F711** Sch. 3B para. 3(4) added (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(b), **9(c)(ii)**

#### Reduction of protected sum

4.—(1) Subject to [<sup>F712</sup>sub-paragraphs (2) to (5)], the protected sum shall be reduced by the amount of any increase, in a benefit week subsequent to the second week, in the claimant's applicable amount determined in accordance with the relevant provisions.

(2) Where regulation 22 (reduction in certain cases of unemployment benefit disqualification) [<sup>F713</sup>or regulation 21A (reductions in certain cases of failure to attend courses)] ceases to apply to a claimant and as a result his applicable amount increases no account shall be taken of that increase.

[<sup>F714</sup>(3) where a claimant's applicable amount increases because a child or young person mentioned in paragraph (5)(c) of regulation 16 (circumstances in which a person is treated or not treated as a member of the household) is treated as a member of the claimant's household under paragraph (6) of that regulation, the claimant's protected sum shall not be reduced by the amount of that increase unless the child or young person has been treated as a member of the household for a continuous period which exceeds 8 weeks.]

[<sup>F715</sup>(4) Where by virtue of the coming into force of regulation 15(a), (b) or (c) of the Income Support (General) Amendment No. 4 Regulations 1991 a claimant's applicable amount increases in his benefit week beginning on a day during the period of 7 days commencing on 1st October 1991, no account shall be taken of that increase.]

[<sup>F716</sup>(5) Where by virtue of the coming into force of regulation 3(1) and (2) of the Income-Related Benefits Amendment Regulations 1992 a claimant's applicable amount increases in his benefit week beginning on a day during the period of 7 days commencing on 5th October 1992, no account shall be taken of that increase.]

#### Textual Amendments

**F712** Words in Sch. 3B para. 4(1) substituted (coming into force in accordance with reg. 2(2) of the amending S.I.) by [The Income-Related Benefits Amendment Regulations 1992 \(S.I. 1992/1326\)](#), regs. 2(2), **3(4)(a)**

**F713** Words in Sch. 3B para. 4(2) inserted (17.12.1990) by [The Income Support \(General and Transitional\) Amendment Regulations 1990 \(S.I. 1990/2324\)](#), regs. 1(1), **5**



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**F714** Sch. 3B para. 4(3) added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **20(b)(ii)**

**F715** Sch. 3B para. 4(4) added (1.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(b), **17(b)** (with reg. 1(2))

**F716** Sch. 3B para. 4(5) added (coming into force in accordance with reg. 2(2) of the amending S.I.) by [The Income-Related Benefits Amendment Regulations 1992 \(S.I. 1992/1326\)](#), regs. 2(2), **3(4)(b)**

### Termination of protected sum

5. Subject to paragraph 6, the protected sum shall cease to be applicable if—
- (a) that amount is reduced to nil under paragraph 4; or
  - (b) the claimant changes or vacates his hostel; or
  - (c) the claimant ceases to be entitled to income support.

### Modifications in cases of temporary absence and loss of entitlement to income support

- 6.—(1) Paragraph 5(b) shall not apply to a claimant if—
- (a) he becomes a patient within the meaning of regulation 21(3) (special cases); or
  - (b) on his ceasing to be a patient within the meaning of regulation 21(3), he returns to the hostel which he occupied immediately before he became a patient; or
  - (c) in a case to which sub-paragraph (3) applies, on his becoming re-entitled to income support, he is in the accommodation which he occupied immediately before he ceased to be entitled to income support.

(2) Except where sub-paragraph (4) applies, where a protected sum was applicable to the claimant immediately before he or any partner of his became a patient within the meaning of regulation 21(3) for a period of 14 weeks or less, he shall, subject to sub-paragraph (1)(b), on his or, as the case may be, his partner ceasing to be a patient be entitled to a protected sum equal to—

- (a) the amount by which his protected total exceeds his applicable amount determined in accordance with the relevant provisions in the first benefit week in which his applicable amount ceases to be determined under paragraph 1 of Schedule 7 and either—
  - (i) any eligible housing benefit for the period of 7 consecutive days beginning on 9th October 1989; or, if greater,
  - (ii) in a case where sub-paragraph (4)(b) applied, any eligible housing benefit for the period of 7 consecutive days referred to in that sub-paragraph; or

[ where the first benefit week in which his applicable amount ceases to be determined under paragraph 1 of Schedule 7 is the relevant benefit week, the amount determined under <sup>F717</sup>(aa) paragraph 2(4) or, as the case may be, paragraph 2(6), less any reduction under paragraph 4(1) other than a reduction which arises by virtue of his ceasing to be a patient within the meaning of regulation 21(3); or]

- (b) the amount of the protected sum to which he was entitled in the immediately preceding benefit week,

whichever is the lower.

(3) Paragraph 5(c) shall not apply to a claimant who has ceased to be entitled to income support for [<sup>F718</sup>a period not exceeding the permitted period determined in accordance with regulation 3A (permitted period)]—

- (a) if immediately before he ceased to be so entitled a protected sum was applicable to him; and

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- (b) except where sub-paragraph (4) applies, if during that period he becomes re-entitled, or would by virtue of this sub-paragraph be re-entitled, to income support he shall, subject to sub-paragraph (1)(c), be entitled to a protected sum equal to—
- (i) the amount by which his protected total exceeds his applicable amount determined in accordance with the relevant provisions in the first benefit week in which he becomes so re-entitled and either any eligible housing benefit for the period of 7 consecutive days beginning 9th October 1989 or, if greater, in a case to which sub-paragraph (4) (b) applied, any eligible housing benefit for the period of 7 consecutive days referred to in that sub-paragraph; or
  - [<sup>F719</sup>(ii) where the first benefit week in which he becomes so re-entitled is the relevant benefit week, the amount determined under paragraph 2(4) or, as the case may be, paragraph 2(6), less any reduction under paragraph 4(1) in that benefit week; or
  - (iii) where the first benefit week in which he becomes so re-entitled is a week subsequent to the relevant benefit week, the amount which would have been determined under paragraph 2(4) or, as the case may be, paragraph 2(6) had he been entitled in the relevant benefit week, less any reduction under paragraph 4(1) in the benefit week in which he becomes re-entitled; or
  - (iv) the amount of the protected sum to which he was previously entitled,]
- whichever is the lower.
- (4) Where a claimant or any partner of his is temporarily absent from his accommodation for a period not exceeding 14 weeks which includes the first or second week (or both)—
- (a) in a case where a protected sum was applicable to the claimant immediately before his or, as the case may be, his partner's return to that accommodation and the full charge was made for the accommodation during the temporary absence, on the claimant's or, as the case may be, his partner's return to that accommodation, the claimant shall be entitled to a protected sum equal to—
    - (i) the amount by which his protected total exceeds his applicable amount determined in accordance with the relevant provisions in the first complete benefit week after his, or as the case may be, his partner's return to that accommodation and any eligible housing benefit for the period of 7 consecutive days beginning 9th October 1989; or
    - (ii) the amount of the protected sum which was applicable to him in the immediately preceding benefit week,

whichever is the lower.
  - (b) in a case where—
    - (i) a protected sum has not at any time been applicable to the claimant; or
    - (ii) immediately before the claimant's or, as the case may be, his partner's return to that accommodation a protected sum was applicable to the claimant but a reduced charge was made for the accommodation during the temporary absence,

the claimant on his or, as the case may be, his partner's return to that accommodation shall, subject to sub-paragraph (5), be entitled to a protected sum equal to the amount by which his protected total exceeds his applicable amount determined in accordance with the relevant provisions in the first complete benefit week after his or, as the case may be, his partner's return to that accommodation and the amount of eligible housing benefit for the period of 7 consecutive days beginning on the date determined in accordance with regulation 65 or, as the case may be, 68(2) of the Housing Benefit (General) Regulations 1987 (date on which entitlement is to commence or change of circumstances is to take effect) following that person's return to that accommodation.
- (5) Where, in a case to which sub-paragraph (4)(b)(i) applies—

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- (a) in the first complete benefit week after the claimant's or, as the case may be, his partner's return to his accommodation the claimant's income calculated in accordance with Part V or, as the case may be, VI exceeds the aggregate of his applicable amount determined in accordance with the relevant provisions and X; and
- (b) the amount of income support to which he was entitled in the first week is more than the amount of housing benefit to which he would, but for this sub-paragraph, have been entitled in the period of 7 consecutive days beginning on the date determined in accordance with regulation 65 or, as the case may be, 68(2) of the Housing Benefit (General) Regulations 1987 following his or, as the case may be, his partner's return to that accommodation,

the protected sum applicable to the claimant shall be an amount equal to X+Y+10 pence.

(6) In sub-paragraph (5)–

“X” means the sum which, but for sub-paragraph (5), would be the protected sum applicable in a case to which sub-paragraph (4)(b)(i) applies;

“Y” means the amount of the excess to which sub-paragraph (5)(a) refers.

(7) The foregoing provisions of this paragraph shall not apply to a claimant if he or, if he has a partner, he or his partner, in the first week is temporarily living in a hostel and that accommodation is not the accommodation normally occupied as the home.]

#### Textual Amendments

- F717** Sch. 3B para. 6(2)(aa) inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **20(c)(i)**
- F718** Words in Sch. 3B para. 6(3) substituted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(b), **9(d)**
- F719** Sch. 3B para. 6(3)(b)(ii)-(iv) substituted for Sch. 3B para. 6(3)(b)(ii) (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **20(c)(ii)**

## [<sup>F720</sup>SCHEDULE 3C

Regulation 2A(1)(b)

### THE GREATER LONDON AREA

#### Textual Amendments

- F720** Sch. 3C inserted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), reg. 1(1), **Sch. 2**

The area described in this Schedule comprises—

- (a) the Boroughs of

Barking

Hillington

Barnet

Hounslow

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Bexley	Islington
Brent	Kensington and Chelsea
Bromley	Kingston—Upon—Thames
Camden	Lambeth
City of Westminster	Lewisham
Croydon	Merton
Ealing	Newham
Enfield	Redbridge
Greenwich	Richmond—Upon—Thames
Hackney	Southwark
Haringey	Sutton
Hammersmith & Fulham	Tower Hamlets
Harrow	Waltham Forest
Havering	Wandsworth

- 
- (b) the City of London;
- (c) in the County of Essex that part of the district of Epping Forest which comprises the parishes of Chigwell and Waltham Holy Cross;
- (d) in the County of Hertfordshire, that part of the Borough of Broxbourne which lies south of Cheshunt Park, including Slipe Lane, and that part of the district of Hertsmere which comprises the former parishes of Elstree, Ridge, Shenley and South Mimms;
- (e) in the County of Surrey, the Borough of Spelthorne and that part of the Borough of Elmbridge which was formerly administered by the Old Esher District Council.]

#### SCHEDULE 4

Regulation 19

### PART I

#### applicable amounts of persons in residential care and nursing homes

1.—(1) Subject to sub-paragraph (2), the weekly applicable amount of a claimant to whom regulation 19 applies shall be the aggregate of—

- (a) subject to paragraph 3, the weekly charge for the accommodation, including all meals and services, provided for him or, if he is a member of a family, for him and his family increased, where appropriate, in accordance with paragraph 2 but, except in a case to which paragraph 12 applies, subject to the maximum determined in accordance with paragraph 5; and
- (b) a weekly amount for personal expenses for him and, if he is a member of a family, for each member of his family determined in accordance with paragraph 13; and

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- (c) where he is only temporarily in such accommodation any amount applicable under [<sup>F721</sup>regulation 17(1)(e) or 18(1)(f)] (housing costs) in respect of the dwelling normally occupied as the home; [<sup>F722</sup>and
- (d) any amount determined in accordance with regulation 17(1)(f) or 18(1)(g) (applicable amounts).]

(2) No amount shall be included in respect of any child or young person who is a member of the claimant's family if the capital of that child or young person calculated in accordance with Part V in like manner as for the claimant, except where otherwise provided, would exceed £3,000.

#### Textual Amendments

**F721** Words in Sch. 4 para. 1(1)(c) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **21(a)**

**F722** Sch. 4 para. 1(1)(d) and word added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **21(b)**

#### Modifications etc. (not altering text)

**C35** [Sch. 4 Pt. I para. 1\(2\)](#) sum confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(2)**

#### Commencement Information

**I108** Sch. 4 para. 1 in force at 11.4.1988, see [reg. 1](#)

2.—(1) Where, in addition to the weekly charge for accommodation, a separate charge is made for the provision of heating, attention in connection with bodily functions, supervision, extra baths, laundry or a special diet needed for a medical reason, the weekly charge for the purpose of paragraph 1(1)(a) shall be increased by the amount of that charge.

(2) Where the weekly charge for accommodation does not include the provision of all meals, it shall, for the purpose of paragraph 1(1)(a), be increased in respect of the claimant or, if he is a member of a family, in respect of each member of his family by the following amount:

- (a) if the meals can be purchased within the residential care or nursing home, the amount equal to the actual cost of the meals, calculated on a weekly basis; or
- (b) if the meals cannot be so purchased, the amount calculated on a weekly basis—
  - (i) for breakfast, at a daily rate of £1.10;
  - (ii) for a midday meal, at a daily rate of £1.55; and
  - (iii) for an evening meal, at a daily rate of £1.55;

except that, if some or all of the meals are normally provided free of charge or at a reduced rate, the amount shall be reduced to take account of the lower charge or reduction.

#### Modifications etc. (not altering text)

**C36** Sch. 4 paras. 2(2)(b)(i)-(iii) sums confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(9)**, [Sch. 6 Pt. II](#)

#### Commencement Information

**I109** Sch. 4 para. 2 in force at 11.4.1988, see [reg. 1](#)

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3. Where any part of the weekly charge for the accommodation is met by housing benefit, an amount equal to the part so met shall be deducted from the amount calculated in accordance with paragraph 1(1)(a).

**Commencement Information**  
I110 Sch. 4 para. 3 in force at 11.4.1988, see [reg. 1](#)

<sup>F723</sup>4. ....

**Textual Amendments**  
F723 Sch. 4 para. 4 omitted (11.4.1988) by virtue of [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), [regs. 1\(1\), 31\(a\)](#)

**Commencement Information**  
I111 Sch. 4 para. 4 in force at 11.4.1988, see [reg. 1](#)

- 5.—(1) Subject to paragraph 12 the maximum referred to in paragraph 1(1)(a) shall be—
- (a) in the case of a single claimant, the appropriate amount in respect of that claimant specified in or determined in accordance with paragraphs 6 to 11;
  - <sup>F724</sup>(b) in the case of a claimant who is a member of a family the aggregate of the following amounts—
    - (i) in respect of the claimant, the appropriate amount in respect of him specified in or determined in accordance with paragraph 6 to 11;
    - (ii) in respect of each member of his family who lives in the home aged under 11, 1½ times the amount specified in paragraph 2(a) of Schedule 2;
    - (iii) in respect of each member of his family aged not less than 11 who lives in the home, an amount which would be the appropriate amount specified in or determined in accordance with paragraph 6 to 11 if the other member were the claimant.]

(2) The maximum amount in respect of a member of the family aged under 11 calculated in the manner referred to in sub-paragraph (1) (b) (i) shall be rounded to the nearest multiple of 5p by treating an odd amount of 2.5p or more as 5p and by disregarding an odd amount of less than 2.5p.

**Textual Amendments**  
F724 Sch. 4 para. 5(1)(b) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), [regs. 1\(1\)\(a\), 10](#)

**Commencement Information**  
I112 Sch. 4 para. 5 in force at 11.4.1988, see [reg. 1](#)

**Residential care homes**

6.—(1) Subject to sub-paragraph (2) and paragraphs 8 to 11, where the accommodation provided for the claimant is a residential care home for persons in need of personal care by virtue of—

- (a) old age, the appropriate amount shall be [<sup>F725</sup>£203.00] per week;

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- (b) past or present mental disorder but excluding mental handicap, the appropriate amount shall be [<sup>F725</sup>£214.00] per week;
  - (c) past or present drug or alcohol dependence, the appropriate amount shall be [<sup>F725</sup>£214.00] per week;
  - (d) mental handicap, the appropriate amount shall be [<sup>F725</sup>£244.00] per week;
  - (e) physical disablement, the appropriate amount shall be—
    - (i) in the case of a person to whom paragraph 8 applies, [<sup>F725</sup>£276.00] per week, or
    - (ii) in any other case, [<sup>F725</sup>£203.00] per week; or
  - (f) any condition not falling within sub-paragraphs (a) to (e) above, the appropriate amount shall be [<sup>F725</sup>£203.00] per week.
- (2) Where the claimant is over pensionable age and—
- [<sup>F726</sup>(a) he is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act (welfare services) or, in Scotland has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a regional or islands council; or]
  - [<sup>F727</sup>(b) he—
    - (i) is entitled to attendance allowance at the higher rate in accordance with section 65(3) of the Contributions and Benefits Act, or the care component of disability living allowance at the highest rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act, or
    - (ii) has made a claim for attendance allowance or disability living allowance and, in respect of that claim, a decision has been made that he satisfies the disability conditions, but he has not yet completed the qualifying period for that benefit; or]
  - (c) he is in receipt of any payment based on need for attendance which is payable—
    - (i) under section 61 of the Social Security Act <sup>F728</sup>
    - (ii) by virtue of article 14 of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983 <sup>F729</sup> or article 14 of the Personal Injuries (Civilians) Scheme 1983 <sup>F730</sup>
- the appropriate amount shall, except where sub-paragraph (1)(d) or (e)(i) applies, be [<sup>F731</sup>£234.00 ]per week.
- [<sup>F732</sup>(3) In this paragraph—
- (a) “the disability conditions” means—
    - (i) in the case of attendance allowance, the conditions in section 64(2) and (3) of the Contributions and Benefits Act; and
    - (ii) in the case of disability living allowance, the conditions in section 72(1)(b) and (c) of the Contributions and Benefits Act;
  - (b) “the qualifying period” means—
    - (i) in the case of attendance allowance, the period specified in section 65(1)(b) of the Contributions and Benefits Act; and
    - (ii) in the case of disability living allowance, the period specified in section 72(2)(a) of the Contributions and Benefits Act.]

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### Textual Amendments

- F725** Sch. 4 para. 6(1) sums substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(8)**, **Sch. 6 Pt. I**
- F726** Sch. 4 para. 6(2)(a) substituted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **20(b)**
- F727** Sch. 4 para. 6(2)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **20(2)(a)**
- F728** subsections (3) and (4) of section 61 were added by the [Social Security Act 1986 \(c. 50\)](#) section 39, Schedule 3 paragraph 6.
- F729** [S.I. 1983/883](#).
- F730** [S.I. 1983/686](#).
- F731** Sum in [Sch. 4 para. 6\(2\)](#) substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(8)**
- F732** Sch. 4 para. 6(3) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **20(2)(b)**

### Commencement Information

- I113** Sch. 4 para. 6 in force at 11.4.1988, see [reg. 1](#)

## Nursing homes

7. Subject to paragraphs 8 to 11, where the accommodation provided for the claimant is a nursing home for persons in need of personal care by virtue of—

- (a) past or present mental disorder but excluding mental handicap, the appropriate amount shall be [<sup>F733</sup>£304.00] per week;
- (b) mental handicap, the appropriate amount shall be [<sup>F733</sup>£310.00] per week;
- (c) past or present drug or alcohol dependence, the appropriate amount shall be [<sup>F733</sup>£304.00] per week;
- (d) physical disablement, the appropriate amount shall be—
  - (i) in the case of a person to whom paragraph 8 applies, [<sup>F733</sup>£341.00] per week, or
  - (ii) in any other case, [<sup>F733</sup>£303.00] per week;
- (e) terminal illness, the appropriate amount shall be [<sup>F733</sup>£303.00] per week; or
- (f) any condition not falling within sub-paragraphs (a) to (e), the appropriate amount shall be [<sup>F733</sup>£303.00] per week.

### Textual Amendments

- F733** Sch. 4 para. 7 sums substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(8)**, **Sch. 6 Pt. I**

### Commencement Information

- I114** Sch. 4 para. 7 in force at 11.4.1988, see [reg. 1](#)



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8. For the purposes of paragraphs 6(e) and 7(d) this paragraph applies to a person under pensionable age or a person over pensionable age who, before attaining pensionable age, had become physically disabled.

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**Commencement Information**

**I115** Sch. 4 para. 8 in force at 1.4.1988, see [reg. 1](#)

9. The appropriate amount applicable to a claimant in a residential care home or nursing home shall, subject to paragraph 10, be determined—

- (a) where the home is a residential care home registered under Part I of the Registered Homes Act 1984<sup>F734</sup>, by reference to the particulars recorded in the register kept by the relevant registration authority for the purposes of that Act; or
- (b) where the home is a residential care home not so registered or a nursing home, by reference to the type of care which, taking into account the facilities and accommodation provided, the home is providing to the claimant.

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**Textual Amendments**

**F734** 1984 c. 23.

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**Commencement Information**

**I116** Sch. 4 para. 9 in force at 11.4.1988, see [reg. 1](#)

10.—(1) Where more than one amount would otherwise be applicable, in accordance with paragraph 9, to a claimant in a residential care home or a nursing home, the appropriate amount in any case shall be determined in accordance with the following sub-paragraphs.

(2) Where the home is a residential care home registered under Part I of the Registered Homes Act 1984 and where the personal care that the claimant is receiving corresponds to the care received by a category of residents for whom the register indicates that the home provides accommodation, the appropriate amount shall be the amount, in paragraph 6 or 8, as the case may be, as is consistent with that personal care.

(3) Where the home is a residential care home which is so registered but where the personal care that the claimant is receiving does not correspond to the care received by a category of residents for whom the register indicates that the home provides accommodation, the appropriate amount shall be the lesser or least amount, in paragraphs 6 or 8, as the case may be, as is consistent with those categories.

(4) In any case not falling within sub-paragraph (2) or (3), the appropriate amount shall be whichever amount of the amounts applicable in accordance with paragraphs 6 or 7 and 9 is, having regard to the types of personal care that the home provides, most consistent with the personal care being received by the claimant in that accommodation.

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**Commencement Information**

**I117** Sch. 4 para. 10 in force at 11.4.1988, see [reg. 1](#)

11.—(1) Where the accommodation provided for the claimant is a residential care home or a nursing home which is, in either case, situated in the Greater London area and the actual charge for

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that accommodation exceeds the appropriate amount in his case by virtue of the preceding paragraphs of this Schedule, that amount shall be increased by any excess up to—

- (a) in the case of a residential care home, [<sup>F735</sup>£38.00];
- (b) in the case of a nursing home, [<sup>F735</sup>£43.00].

(2) In sub-paragraph (1), “the Greater London area” means all those areas specified [<sup>F736</sup>in Schedule 3C].

#### Textual Amendments

**F735** Sch. 4 para. 11(1) sums substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(8)**, **Sch. 6 Pt. 1**

**F736** Words in Sch. 4 para. 11(2) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **20(3)**

#### Commencement Information

**I118** Sch. 4 para. 11 in force at 11.4.1988, see [reg. 1](#)

### Circumstances in which the maximum is not to apply

**12.**—(1) Where a claimant who satisfies the conditions in sub-paragraph (2) has been able to meet the charges referred to in paragraphs 1 and 2 without recourse to income support or supplementary benefit, the maximum determined in accordance with paragraph 5 shall not apply for the period of 13 weeks or, if alternative accommodation is found earlier, such lesser period following the date of claim except to the extent that the claimant is able to meet out of income disregarded for the purposes of Part V the balance of the actual charge over the maximum.

(2) The conditions for the purposes of sub-paragraph (1) are that—

- (a) the claimant has lived in the same accommodation for more than 12 months; and
- (b) he was able to afford the charges in respect of that accommodation when he took up residence; and
- (c) having regard to the availability of suitable alternative accommodation and to the circumstances mentioned in paragraph 10(7)(b) of Schedule 3 (housing costs), it is reasonable that the maximum should not apply in order to allow him time to find alternative accommodation; and
- (d) he is not a person who is being accommodated—
  - (i) by a housing authority under Part III of the Housing Act 1985 <sup>F737</sup> (housing the homeless), or
  - (ii) by a local authority under [<sup>F738</sup>section 20 of the Children Act 1989 (provision of accommodation for children: general)] or, in Scotland, section 12 of the Social Work (Scotland) Act 1968 <sup>F739</sup> (general welfare); and
- (e) he is seeking alternative accommodation and intends to leave his present accommodation once alternative accommodation is found.

(3) Where—

- (a) the claimant was a resident in a residential care home or nursing home immediately before 29 April 1985 and has continued after that date to be resident in the same accommodation, apart from any period of temporary absence; and

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- (b) immediately before that date, the actual charge for the claimant's accommodation was being met either wholly or partly out of the claimant's resources, or, wholly or partly out of other resources which can no longer be made available for this purpose; and
- (c) since that date the local authority have not at any time accepted responsibility for the making of arrangements for the provision of such accommodation for the claimant; and
- (d) the Secretary of State, in his discretion, has determined that this sub-paragraph shall have effect in the particular case of the claimant in order to avoid exceptional hardship,

the maximum amount shall be the rate specified in sub-paragraph (4) if that rate exceeds the maximum which, but for this sub-paragraph, would be determined under paragraph 5.

- (4) For the purposes of sub-paragraph (3) the rate is either—
  - (a) the actual weekly charge for the accommodation immediately before 29 April 1985 plus £10; or
  - (b) the aggregate of the following amounts—
    - (i) the amount estimated under regulation 9(6) of the Supplementary Benefit (Requirements) Regulations 1983 <sup>F740</sup> as then in force as the reasonable weekly charge for the area immediately before that date;
    - (ii) £26.15; and
    - (iii) if the claimant was entitled at that date to attendance allowance under section 35 of the Social Security Act at the higher rate £28.60 or, as the case may be, at the lower rate, £19.10,

whichever is the lower amount.

#### Textual Amendments

**F737** 1985 c. 68.

**F738** Words in Sch. 4 para. 12(2)(d)(ii) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), Sch. para. 8(a)

**F739** 1968 c. 49.

**F740** S.I. 1983/1399.

#### Commencement Information

**I119** Sch. 4 para. 12 in force at 11.4.1988, see [reg. 1](#)

### Personal allowances

**13.** The allowance for personal expenses for the claimant and each member of his family referred to in paragraph 1(1)(b) shall be—

- (a) for the claimant [<sup>F741</sup>£13.75], and if he has a partner, for his partner, [<sup>F741</sup>£13.75];
- (b) for a young person aged 18, [<sup>F741</sup>£13.75];
- (c) for a young person aged under 18 but over 16, [<sup>F741</sup>£9.55];
- (d) for a child aged under 16 but over 11, [<sup>F741</sup>£8.25];
- (e) for a child aged under 11, [<sup>F741</sup>£5.65].

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#### Textual Amendments

**F741** Sch. 4 para. 13 substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(8)**, **Sch. 6 Pt. I**

#### Commencement Information

**I120** Sch. 4 para. 13 in force at 11.4.1988, see [reg. 1](#)

## PART II

persons to whom regulation 19 does not apply

[<sup>F742</sup>**14.** A claimant or, if he is a member of a family, the claimant and the members of his family where the accommodation and meals (if any) of the claimant or, as the case may be, the claimant and the members of his family are provided in whole or in part by a close relative of his or of any member of his family, or other than on a commercial basis.]

#### Textual Amendments

**F742** Sch. 4 para. 14 substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **31(b)**

#### Commencement Information

**I121** Sch. 4 para. 14 in force at 11.4.1988, see [reg. 1](#)

**15.** A person who is on holiday and during a period which has not continued for more than 13 weeks is absent from his home or from a hospital or similar institution in which he is normally a patient.

#### Commencement Information

**I122** Sch. 4 para. 15 in force at 11.4.1988, see [reg. 1](#)

**16.** A person who has entered a residential care or nursing home for the purpose of receiving an amount of income support to which he would not otherwise be entitled.

#### Commencement Information

**I123** Sch. 4 para. 16 in force at 11.4.1988, see [reg. 1](#)

**17.** A person aged 16 or over but under 19 [<sup>F743</sup>who is being looked after by a local authority] under a relevant enactment except someone who is personally liable to pay the cost of his accommodation and maintenance direct to someone other than a local authority.

#### Textual Amendments

**F743** Words in Sch. 4 para. 17 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), Sch. para. 8(b) (with Sch. para. 11)

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**Commencement Information**

**I124** Sch. 4 para. 17 in force at 11.4.1988, see [reg. 1](#)

[<sup>F744</sup>**18.** A person who is living in a residential care home within the meaning of paragraph (d) of the definition of “residential care home” in regulation 19(3) and who is not in receipt of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder.]

**Textual Amendments**

**F744** Sch. 4 para. 18 added (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), [regs. 1\(1\)\(c\)](#), **18** (with [reg. 1\(2\)](#))

<sup>F745</sup>SCHEDULE 5

Regulation 20

**Textual Amendments**

**F745** Sch. 5 omitted (with effect in accordance with [reg. 1\(1\)\(c\)](#) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), [reg. 1\(1\)](#), **Sch. 1 para. 12**

SCHEDULE 6

Regulation 20(2) paragraph 5 of  
Schedule 5

BOARD AND LODGING AREAS

**F746** ...

**Textual Amendments**

**F746** Sch. 6 omitted (10.4.1989) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), [reg. 1\(1\)\(c\)](#), **Sch. 1 para. 10** (with [reg. 28](#))

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## SCHEDULE 7

Regulation 21

## APPLICABLE AMOUNTS IN SPECIAL CASES

**Modifications etc. (not altering text)**

**C37** Sch. 7 paras. 7, 8, 16 and 17 sums confirmed (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(11), [Sch. 7 Pt. II](#)

**Commencement Information**

**I125** Sch. 7 in force at 11.4.1988, see [reg. 1](#)

**Column (1)****Column (2)****Patients**

<sup>F747</sup>**1.** Subject to paragraphs 2, 2A, 3 and 18, a person who has been a patient for a period of more than six weeks and who is—

- |   |   |
|---|---|
| (a) (a) a single claimant;  | 1   |
| (b) (b) a lone parent;  | (a) £15.30 plus any amount applicable under regulation 17(1)(e), (f) or (g);<br><br>(b) (b) £15.30 plus any amounts applicable to him under regulation 17(1)(b), (c), (e), (f) or (g) or under regulation 17(1)(d) because of paragraph 8 or 14 of Schedule 2 (applicable amounts); |
| (c) (c) a member of a couple—<br>(i) where only one of the couple is a patient or, where both members of the couple are patients but only one has been a patient for that period; | (c) (i) the amount applicable in respect of both of them under regulation 17(1) reduced by £12.25;  |
| (ii) where both members of the couple have been a patient for that period;  | (ii) £30.60 plus any amounts which may be applicable under regulation 17(1)(b), (c), (e), (f) or (g) or under regulation 17(1)(d) because of paragraph 14 of Schedule 2;  |
| (d) (d) a member of a polygamous marriage—<br>(i) where at least one member of the polygamous marriage is not a patient or has not been   | (d) (i) the applicable amount under regulation 18 (polygamous marriages) shall be reduced by £12.25 in respect of each such member who is a patient;  |

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a patient for more than that period;

- (ii) where all the members of the polygamous marriage have been patients for more than that period. (ii) the applicable amount shall be £15.30 in respect of each member plus any amounts applicable under regulation 18(1)(c), (d), (f), (g) or (h), or (e) because of his satisfying the condition specified in paragraph 14 of Schedule 2.]

[<sup>F748</sup>2. A single claimant who has been a patient for a continuous period of more than 52 weeks, where—

- (a) (a) the following conditions are satisfied— 2
- (i) a person has been appointed to act for him under regulation 33 of the Social Security (Claims and Payments) Regulations 1987 (persons unable to act); and (a) Such amount (if any) not exceeding £12.25 as is reasonable having regard to the views of the hospital staff and the patient's relatives if available as to the amount necessary for his personal use;
- (ii) his income support is payable to an administrative officer of the hospital or other institution either as or at the request of the person so appointed; and
- (iii) a registered medical practitioner treating him certifies that all or part of his income support cannot be used by him or on his behalf; or
- (b) (b) those conditions are not satisfied. (b) (b) £12.25.]

[<sup>F749</sup>2A. A single claimant who is detained under the provisions of the Mental Health Act 1983 or the Mental Health (Scotland) Act 1984 and who immediately before his detention under either of those Acts was a prisoner. 2A. £12.25.]

[<sup>F750</sup>3. Subject to paragraph 18—

- (a) (a) a claimant who is not a patient and who is a member of a family of which another member is a child or young person who has been a patient for a period of more than 12 weeks; or 3
- (a) The amount applicable to him under regulation 17(1) or 18 except

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that the amount applicable under regulation 17(1)(b) or 18(1)(c) in respect of the child or young person referred to in Column (1) of this paragraph shall be £12.25 instead of an amount determined in accordance with paragraph 2 of Schedule 2; or

(b) (b) where the person is a member of a family and paragraph 1 applies to him and another member of the family who is a child or young person has been a patient for a period of more than 12 weeks.

(b) (b) the amount applicable to him under paragraph 1 except that the amount applicable under regulation 17(1)(b) or 18(1)(c) in respect of the child or young person referred to in Column (1) of this paragraph shall be £12.25 instead of an amount determined in accordance with paragraph 2 of Schedule 2.]

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**Claimants without accommodation**

6. A claimant who is without accommodation.

6. The amount applicable to him under regulation 17[F753(1)](a) only.

**Members of religious orders**

7. A claimant who is a member of and fully maintained by a religious order.

7. Nil.

**Prisoners**

VALID FROM 12/04/2004	
<b>8.</b>	A person—

(a) (a) except where sub-paragraph (b) applies, who is a prisoner;

**8**

(a) Nil;

(b) (b) who is detained in custody pending trial or sentence following conviction by a court.

(b) (b) only such amount, if any, as may be applicable under regulation 17[F753(1)](e).

**Specified cases of temporarily separated couples**



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9. A claimant who is a member of a couple and who is temporarily separated from his partner [<sup>F754</sup>where—

- (a) one member of the couple is—
  - (i) not a patient but is resident in a nursing home, or
  - (ii) resident in a residential care home, or
  - (iii) resident in premises used for the rehabilitation of alcoholics or drug addicts, or
  - (iv) resident in accommodation provided under section 3 of and Part II of the Schedule to, the Polish Resettlement Act 1947 (provision of accommodation in camps) , or
  - (v) participating in arrangements for training made under section 2 of the Employment and Training Act 1973 [<sup>F755</sup>or section 2 of the Enterprise and New Towns (Scotland) Act 1990] or attending a course at an employment rehabilitation centre established under that section [<sup>F756</sup>of the 1973 Act], where the course requires him to live away from the dwelling occupied as the home, or
  - (vi) in a probation or bail hostel approved for the purpose by the Secretary of State; and
- (b) the other member of the couple is—
  - (i) living in the dwelling occupied as the home, or
  - (ii) a patient, or
  - (iii) in residential accommodation, or
  - (iv) resident in a residential care home or nursing home.]

9. Either—

- (a) the amount applicable to him as a member of a couple under regulation 17 [<sup>F753</sup>(1)]; or
- (b) the aggregate of his applicable amount and that of his partner assessed under the provisions of these Regulations as if each of them were a single claimant, or a lone parent, whichever is the greater.

### **Polygamous marriages where one or more partners are temporarily separated**

10. A claimant who is a member of a polygamous marriage and who is temporarily separated from a partner of his, where one of

10. Either—

- (a) the amount applicable to the members of the polygamous marriage under regulation 18; or

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them is living in the home while the other member is—

- (a) not a patient but is resident in a nursing home; or
- (b) resident in a residential care home; or
- (c) <sup>F757</sup>.....
- (d) resident in premises used for the rehabilitation of alcoholics or drug addicts; or
- (e) attending a course of training or instruction provided or approved by the [<sup>F758</sup>Secretary of State for Education and Employment] where the course requires him to live away from home; or
- (f) in a probation or bail hostel approved for the purpose by the Secretary of State.

(b) the aggregate of the amount applicable for the members of the polygamous marriage who remain in the home under regulation 18 and the amount applicable in respect of those members not in the home calculated as if each of them were a single claimant, or a lone parent, whichever is the greater.

**[<sup>F759</sup>Single claimants temporarily in local authority accommodation**

**10A.** A single claimant who is temporarily in accommodation referred to in any of sub-paragraphs (a) to (d) (excluding heads (i) and (ii) of sub-paragraph (d)) of the definition of residential accommodation in regulation 21(3) (special cases).

**10A.** £61.15 of which £13.75 is for personal expenses plus any amounts applicable under regulation 17(1)(e), (f) or (g).]

**[<sup>F760</sup>Couples and members of polygamous marriages where one member is or all are temporarily in local authority accommodation**

**10B.** —

(1) A claimant who is a member of a couple and temporarily separated from his partner where one of them is living in the home while the other is in accommodation referred to in any of sub-paragraphs (a) to (d) (excluding heads (i) and (ii) of sub-paragraph (d)) of the definition of residential accommodation in regulation 21(3) (special cases)

(1) The aggregate of the amount applicable for the member who remains in the home calculated as if he were a single claimant under regulation 17(1), 19 or 21 and in respect of the other member £61.15 of which £13.75 is for personal expenses.

(2) A claimant who is a member of a polygamous marriage and who is temporarily separated from a partner of his where one is, or some are, living in the home while one is, or some are, in accommodation referred to in subparagraph (1).

(2) The aggregate of the amount applicable, for the members of the polygamous marriage who remain in the home, under regulation 18 and in respect of each member not in the home £61.15 of which £13.75 is for personal expenses.

(3) A claimant who is a member of a couple or a member of a polygamous marriage where both members of that couple or all the members

(3) For each member of that couple or marriage £61.15 of which £13.75 is for personal expenses plus, if appropriate, the amount

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of that marriage are in accommodation referred to in sub-paragraph (1). applicable under regulation 17(1)(e), (f) or (g) or 18(1)(f), (g) or (h).]

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[<sup>F762</sup>**Lone parents who are in residential accommodation temporarily**

**10C.** A claimant who is a lone parent who has entered residential accommodation temporarily.

**10C.** £61.15 of which £13.75 is for personal expenses, plus—

- (a) in respect of each child or young person who is a member of his family, the amount in respect of him prescribed in paragraph 2(a), (b), (c) or (d) of Schedule 2 or under this Schedule as appropriate; and
- (b) any amount which would be applicable to the claimant if he were not temporarily living away from the dwelling occupied as his home, under regulation 17(1)(c), (e), (f) or (g), or (d) in so far as that amount relates to the lone parent premium under paragraph 8 of Schedule 2.]

[<sup>F763</sup>**Lone parents who are in residential care homes or nursing homes temporarily**

**10D.** <sup>F764</sup> ...

F764

...

**Couples where one member is abroad**

**11.** [<sup>F765</sup>Subject to paragraph 11A,] a claimant who is a member of a couple and whose partner is temporarily not present in [<sup>F766</sup>United Kingdom.]

**11.** For the first four weeks of that absence, the amount applicable to them as a couple under regulation 17[<sup>F753</sup>(1)], or [<sup>F767</sup>19 or 21] as the case may be and thereafter the amount applicable to the claimant in Great Britain under regulation 17[<sup>F753</sup>(1)] or [<sup>F767</sup>19 or 21] as the case may be as if the claimant were a single claimant or, as the case may be, a lone parent.

[<sup>F768</sup>**Couple or member of couple taking child or young person abroad for treatment**

**11A.—**(1) A claimant who is a member of a couple where either—

- (a) he or his partner is, or
- (b) both he and his partner are absent from the United Kingdom in [<sup>F769</sup>in the circumstances specified in paragraph (2).

(2) For the purposes of sub-paragraph (1), the specified circumstances are—

**11A.** For the first 8 weeks of that absence, the amount applicable to the claimant under regulation 17(1), 19 or 21, as the case may be, and, thereafter, if the claimant is in Great Britain the amount applicable to him under regulation 17(1), 19 or 21, as the case may be, as if the claimant were a single claimant, or, as the case may be, a lone parent.]

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- (a) in respect of a claimant, those in regulation 4(3)(a) to (d);
- (b) in respect of a claimant's partner, as if regulation 4(3)(a) to (d) applied to that partner.]

#### [<sup>F770</sup>**Polygamous marriages where any member is abroad**

**12.** Subject to paragraph 12A, a claimant who is a member of a polygamous marriage where—

- (a) he or one of his partners is, or
- (b) he and one or more of his partners, are or
- (c) two or more of his partners are,

temporarily absent from the United Kingdom;

**12.** For the first four weeks of that absence, the amount applicable to the claimant under regulations 18 to 21, as the case may be, and thereafter, if the claimant is in Great Britain the amount applicable to him under regulations 18 to 21, as the case may be, as if any member of the polygamous marriage not in the United Kingdom were not a member of the marriage.]

#### [<sup>F771</sup>**Polygamous marriage: taking child or young person abroad for treatment**

**12A.—**(1) A claimant who is a member of a polygamous marriage where—

- (a) he or one of his partners is,
- (b) he and one or more of his partners, are or
- (c) two or more of his partners are,

absent from the United Kingdom in [<sup>F772</sup>in the circumstances specified in paragraph (2).

(2) For the purposes of sub-paragraph (1), the specified circumstances are—

- (a) in respect of a claimant, those in regulation 4(3)(a) to (d);
- (b) in respect of a claimant's partner or partners, as the case may be, as if regulation 4(3)(a) to (d) applied to that partner or those partners.]

**12A.** For the first 8 weeks of that absence, the amount applicable to the claimant under regulations 18 to 21, as the case may be, and thereafter, if the claimant is in Great Britain the amount applicable to him under regulations 18 to 21, as the case may be, as if any member of the polygamous marriage not in the United Kingdom were not a member of the marriage.]

#### [<sup>F773</sup>**Persons in residential accommodation**

**13.—**(1) Subject to sub-paragraph (2), a person in or only temporarily absent from residential accommodation who is—

- (a) (a) a single claimant;
- (b) (b) a lone parent;

**13.—**(1) Any amount applicable under regulation 17(1)(f) or (g) or 18(1)(g) or (h), plus—

- (a) (a) £61.15 of which £13.75 is for personal expenses;
- (b) (b) the amount specified in sub-paragraph (a) of this column;

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- |  |  |
|--|--|
| (c) (c) one of a couple;                   | (c) (c) twice the amount specified in sub-paragraph (a) of this column;  |
| (d) (d) a child or young person;           | (d) (d) the appropriate amount in respect of him prescribed in paragraph 2 of Schedule 2 (applicable amounts);   |
| (e) (e) a member of a polygamous marriage. | (e) (e) the amount specified in sub-paragraph (a) of this column multiplied by the number of members of the polygamous marriage in or only temporarily absent from that accommodation. |

2) A single claimant who has become a patient and whose residential accommodation was provided by and managed by a local authority. 2) Any amount applicable under regulation 17(1)(f) or (g), plus £13.75.]

#### [<sup>F774</sup>Polish Resettlement

##### 13A. —

(1) A claimant for whom accommodation is provided under section 3 of, and Part II of the Schedule to, the Polish Resettlement Act 1947 (provision of accommodation in camps).

where the claimant both requires personal care and is provided with it in the accommodation and—

- (a) is resident in that accommodation on 31st March 1995 or is temporarily absent on that date; or
- (b) is first provided with such accommodation and care on or after 1st April 1995; or
- (c) is re-admitted to such accommodation on or after 1st April 1995 where his absence has been other than temporary.

(2) In this paragraph “personal care” means care which includes assistance with bodily functions where such assistance is required.

(3) An absence is temporary for the purposes of sub-paragraph (1) where the absent resident with the agreement of the manager of the accommodation intends to return to the accommodation in due course.

##### 13A. —

(1) The aggregate of—

- (a) the weekly charge for the accommodation provided for him, or if he is a member of a family, for him and his family subject to the maximum determined in accordance with sub-paragraph (2); and
- (b) a weekly amount for personal expenses for him or, if he is a member of a family, for him and for each member of his family determined in accordance with sub-paragraph (3) or, in the case of a claimant to whom sub-paragraph (1) (b) or (c) of Column (1) applies, determined in accordance with sub-paragraph (3A) below.

(2) The maximum referred to in sub-paragraph (1)(a) shall be—

- (a) in the case of a single claimant, £341.00;
- (b) in the case of a claimant who is a member of a family the aggregate of the following amounts—
  - (i) in respect of the claimant, £341.00;

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- (ii) in respect of each member of his family who lives in the accommodation aged under 11, 1½ times the amount specified in paragraph 2(a) of Schedule 2;
- (iii) in respect of each member of his family aged not less than 11 who lives in the accommodation, £341.00; and
- (iv) where the claimant is a lone parent, in respect of each member of the family who does not live in the accommodation, the amount which would be applicable in respect of that member under Schedule 2.

(3) Except where the claimant is a person to whom sub-paragraph (1)(b) or (c) of Column (1) refers, the amount for personal expenses referred to in sub-paragraph (1)(b) shall be—

- (a) for the claimant, £17.35;
- (b) for his partner, £17.35;
- (c) for a young person aged 18, £15.55;
- (d) for a young person aged under 18 but over 16, £9.55;
- (e) for a child aged under 16 but over 11, £8.25;
- (f) for a child aged under 11, £5.65.

(3A) In the case of a claimant to whom sub-paragraph (1)(b) or (c) of Column (1) applies, the amount for personal expenses referred to in sub-paragraph (1)(b) above, shall be the aggregate of the amounts which are relevant to him and which are referred to in Schedule 4 paragraph 13.

(4) The maximum amount in respect of a member of a family aged under 11 calculated in the manner referred to in sub-paragraph (2)(b) (ii) shall be rounded to the nearest multiple of 5p by treating an odd amount of 2.5p or more as 5p and by disregarding an odd amount of less than 2.5p.]

#### [<sup>F775</sup>Polish resettlement: Persons temporarily absent from accommodation

**13B.** Where a claimant or his partner is temporarily absent from accommodation to which paragraph 13A applies for which the claimant is liable to pay a retaining fee, and but for that absence from that accommodation

**13B.** The amount otherwise applicable to him under these Regulations may be increased to take account of the retaining fee—

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his applicable amount would be calculated in accordance with that paragraph and the absent person—

- (a) is a patient; or
- (b) is a person to whom sub-paragraph (a) does not apply.

- (a) in a case to which sub-paragraph (a) of Column 1 applies—
  - (i) where the person has been a patient for a period of 6 weeks or less, by an amount not exceeding the maximum amount referred to in paragraph 13A(2)(a);
  - (ii) where the person has been a patient for a period of more than 6 weeks, by an amount not exceeding 80 per cent. of the normal weekly charge for that accommodation, but any such increase shall not be for a continuous period of more than 52 weeks;
- (b) in a case of a person to whom sub-paragraph (b) of Column 1 applies, by an amount not exceeding 80 per cent. of the normal weekly charge for that accommodation, but any such increase shall not be for a continuous period of more than 4 weeks.]

**Polish Resettlement**

**14** <sup>F776</sup>

**F776**

...

...

**Resettlement Units**

**15** <sup>F777</sup>

**F777**

...

...

**Persons temporarily absent from board and lodging accommodation or a hostel, residential care or nursing home**

<sup>F778</sup>16. Where a person is temporarily absent from accommodation for which he is liable to pay a retaining fee, and but for his temporary absence from that accommodation his applicable amount would be calculated in accordance with regulation 19 (applicable amounts for persons in residential care and nursing homes), and]

16. The amount otherwise applicable to him under these Regulations may be increased to take account of the retaining fee by an amount not exceeding 80 per cent of the applicable amount referred to in paragraph 1(1)(a) of Schedule 4 (applicable amounts of persons in residential care or nursing homes) <sup>F779</sup> ... and—

- (a) (a) he is a person in accommodation referred to in [<sup>F780</sup>[<sup>F781</sup>any of sub-paragraphs (a) to (c)] of the definition of residential accommodation][<sup>F782</sup>in regulation 21(3)] (special cases) and paragraph 13 does not apply to him by reason only that his stay in that

- (a) (a) in a case to which sub-paragraph (a) or (b) of Column 1 applies any such increase shall not be for a continuous period of more than 52 weeks;

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accommodation has not become other than temporary; or

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|--|--|
| <p>(b) (b) he is a person to whom paragraph 1 to 3 [<sup>F783</sup>or 18(b)(i), (b)(ii) case two, or (b)(iv) cases one and three (patients)] applies; or</p>   | <p>(b) (b) in a case of a person to whom only sub-paragraph (c) of Column 1 applies, any such increase shall not be for a continuous period of more than four weeks.</p> |
| <p>(c) (c) he is absent for a period of at least one week from that accommodation being accommodation either in a residential care home or nursing home and he is not required to be available for employment.</p> |  |

**Persons from abroad**

17. Except in relation to a person from abroad to whom regulation 70(3) applies (urgent cases)

—

- |   |                     |
|---|---------------------|
| <p>(a) (a) a person from abroad who is a single claimant;</p> | <p>(a) (a) Nil;</p> |
| <p>(b) (b) a lone parent—</p>                                 |                     |
| <p>(i) where he is a person from abroad;</p>                  | <p>(b) (i) nil;</p> |

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- |   |   |
|---|---|
| <p>(c) (c) a member of a couple—</p>  |   |
| <p>(i) where the claimant is not a person from abroad but his partner is such a person, whether or not regulation 70 applies to that partner;</p> | <p>(c) (i) the amount applicable in respect of him only under regulation 17[<sup>F753</sup>(1)](a) plus in respect of any child or young person who is a member of his family and who is not a person from abroad, any amounts which may be applicable to him under regulation 17[<sup>F753</sup>(1)](b), (c) or (d) plus the amount applicable to him under [<sup>F785</sup>regulation 17(1)(e), (f) and (g)] [<sup>F786</sup>or, as the case may be,] [<sup>F787</sup>regulation 19 or 21];</p> |



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|--|---|
| (ii) where the claimant is a person from abroad but his partner is not such a person;  | (ii) nil;   |
| (iii) where the claimant and his partner are both persons from abroad;   | (iii) nil;  |
| (d) (d) where regulation 18 (polygamous marriages) applies and—  |   |
| (i) the claimant is not a person from abroad but one or more but not all of his partners are persons from abroad;  | (d) (i) the amounts determined in accordance with that regulation or [ <sup>F787</sup> regulation 19 or 21] in respect of the claimant and any partners of his and any child or young person for whom he or any partner is treated as responsible, who are not persons from abroad; |
| (ii) the claimant is a person from abroad, whether or not one or more of his partners are persons from abroad;   | (ii) nil;   |
| (iii) the claimant and all his partners are persons from abroad;   | (iii) nil;  |
| (e) (e) where any amount is applicable to the claimant under regulation 17[ <sup>F753</sup> (1)](d) because of Part III of Schedule 2 because he or his partner satisfies the conditions prescribed therein and he or his partner as the person so satisfying the condition is a person from abroad. | (e) (e) no amount shall be applicable under regulation 17[ <sup>F753</sup> (1)](d) because of Part III of Schedule 2.   |

[<sup>F788</sup>**Persons in residential care or nursing homes who become patients**

**18.** A claimant to whom regulation 19 (persons in residential care or nursing homes) applies immediately before he or a member of his family became a patient where—

- (a) (a) he or any member of his family has been a patient for a period of six weeks or less and the claimant—

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- |  |   |
|--|---|
| <p>(i) continues to be liable to meet the weekly charge for the accommodation without reduction in respect of himself or that member of his family who is a patient;</p> | <p>(a) (i) The amount which would be applicable under regulation 19 as if the claimant or the member of the family who is a patient were resident in the accommodation to which regulation 19 applies;</p>  |
| <p>(ii) continues to be liable to meet the weekly charge for the accommodation but at a reduced rate;</p>  | <p>(ii) the amount which would be applicable under regulation 19 having taken into account the reduced charge, as if the claimant or the member of the family who is a patient were resident in the accommodation to which regulation 19 applies;</p>   |
| <p>(iii) is a single claimant and is likely to return to the accommodation, but has ceased to be liable to meet the weekly charge for that accommodation; or</p>         | <p>(iii) the amount applicable to him (if any) under paragraph 2(2) of Schedule 4 (meal allowances) plus the amount in respect of him as an allowance for personal expenses under paragraph 13 of Schedule 4 as if he were residing in the accommodation to which regulation 19 applies plus any amount applicable under regulation 17(1)(f);</p> |
| <p>(iv) is a single claimant who ceases to be liable to meet the weekly charge for the accommodation, and who is unlikely to return to the accommodation;</p>            | <p>(iv) the amount which would be applicable to him under regulation 17(1);</p>   |
| <p>(b) (b) he or his partner has been a patient for a period of more than six weeks and the patient is—</p>  |   |
| <p>(i) a single claimant;</p>  | <p>(b) (i) £15.30, plus any amount applicable under regulation 17(1)(f), plus either the amount prescribed in paragraph 16 in respect of any retaining fee he is liable to pay for the accommodation or the amount applicable by virtue of regulation 17(1)(e), but not both;</p>   |
| <p>(ii) a lone parent;</p>   | <p>(ii) where one or more children or young persons remain in the accommodation, the amount applicable to the family as if regulation 19, having taken into account</p>   |

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any reduction in charge, continued to apply to all the members of the family except that where the lone parent is the patient no amount shall be applicable in respect of him under paragraph 2(2) of Schedule 4 (meals allowances) and for the amount in respect of the allowance for personal expenses prescribed by paragraph 13 of Schedule 4, there shall be substituted the amount £15.30;

where all the children or young persons are absent from the accommodation, £15.30 plus any amounts applicable to him under regulation 17(1)(b), (c), (d) or (f) plus, if appropriate, either the amount applicable under Column (2) of paragraph 16(a) or the amount applicable by virtue of regulation 17(1)(e) (housing costs) but not both;

where one or more children or young persons are also patients and have been so for more than 12 weeks, in respect of those children and young persons remaining in the accommodation and the lone parent patient the amount specified in case one of Column (2) of sub-paragraph (b)(ii) save that the child or young person who has been a patient for more than 12 weeks shall be disregarded as a member of the family in assessing the amount applicable under regulation 19, and in respect of each such child or young person there shall be added the amount of £15.30;

- (iii) one of a couple or polygamous marriage and one of that couple or marriage is not a patient or has been a patient for six weeks or less;
- (iii) where the members of the family not patients remain in the accommodation, the amount applicable to the family as if regulation 19 having taken into account any reduction in charge, continued to apply to all the members of the family except that in respect of the member of the couple or polygamous marriage who has been a patient for more than six weeks no amount shall be applicable in respect of him under paragraph 2(2) of Schedule 4 and for the amount in respect of the allowance for personal expenses prescribed by paragraph 13 of Schedule 4 there shall be substituted

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the amount of £15.30; where one or more children or young persons are also patients and have been so for more than 12 weeks, in respect of those children and young persons and the member of the couple or polygamous marriage remaining in the accommodation the amount specified in case one of column (2) of sub-paragraph (b)(iii) save that the child or young person who has been a patient for more than 12 weeks shall be disregarded as a member of the family in assessing the amount applicable under regulation 19 and in respect of each such child or young person there shall be added the amount of £12.25;

(iv) one of a couple or polygamous marriage where all the members of that couple or marriage are patients and have been so for more than six weeks;

(iv) where there is no child or young person in the family £15.30 in respect of each member of the couple or polygamous marriage, plus any amount applicable under regulation 17(1)(f) or 18(1)(g), plus either the amount prescribed in paragraph 16 in respect of any retaining fee for the accommodation he is liable to pay or the amount applicable by virtue of regulation 17(1)(e) or 18(1)(f), but not both;

where there is a child or young person remaining in the accommodation, the amount which would be applicable in respect of the family as if regulation 19 having taken into account any reduction in charge continued to apply to all the members of the family except that in respect of each member of the couple or polygamous marriage no amount shall be applicable in respect of him under paragraph 2(2) of Schedule 4, and for the amount in respect of the allowance for personal expenses prescribed by paragraph 13 of Schedule 4 in respect of each member there shall be substituted the amount of £15.30;

where there is a child or young person in the family but no child or young person remains in the accommodation, the amount applicable under paragraph 1(c) or 1(d) as is appropriate plus either the amount applicable under Column (2) of

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paragraph 16(a) or the amount applicable by virtue of regulation 17(1)(e) or 18(1)(f) but not both;

where one or more children or young persons are also patients and have been so for more than 12 weeks, in respect of those children and young persons remaining in the accommodation and the members of the couple or polygamous marriage, the amount specified in case two of Column (2) of sub-paragraph (b)(iv) save that the child or young person who has been a patient for more than 12 weeks shall be disregarded as a member of the family in assessing the amount applicable under regulation 19, and in respect of each such child or young person there shall be added the amount of £12.25;

(c) (c) a child or young person who has been a patient for a period of more than 12 weeks.

(c) (c) the amount applicable under regulation 19 as if that child or young person was not a member of the family plus an amount of £12.25 in respect of that child or young person.]

### **Claimants entitled to the disability premium for a past period**

#### **19. A claimant—**

- (a) whose time for claiming income support has been extended under regulation 19(2) of the Social Security (Claims and Payments) Regulations 1987 <sup>F789</sup> (time for claiming benefit); and
- (b) whose partner was entitled to income support in respect of the period beginning with the day on which the claimant's claim is treated as made under [<sup>F790</sup>regulation 6(3) of those Regulations] and [<sup>F791</sup>ending with the day before the day] on which the claim is actually made; and
- (c) who satisfied the condition in paragraph 11(b) of Schedule 2 and the additional condition referred to in that paragraph and specified in paragraph 12(1)(b) of that Schedule in respect of that period.

**19.** The amount only of the disability premium applicable by virtue of paragraph 11(b) of Schedule 2 as specified in paragraph 15(4)(b) of that Schedule.

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## Rounding of fractions

20. Where any calculation under this Schedule or as a result of income support being awarded for a period less than one complete benefit week results in a fraction of a penny that fraction shall be treated as a penny.

### Textual Amendments

- F747** Sch. 7 para. 1 amended (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(10), **Sch. 7 Pt. I**
- F748** Sch. 7 para. 2 amended (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(10), **Sch. 7 Pt. I**
- F749** Sch. 7 para. 2A amended (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(10), **Sch. 7 Pt. I**
- F750** Sch. 7 para. 3 amended (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(10), **Sch. 7 Pt. I**
- F751** Sch. 7 para. 4 omitted (10.4.1989) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 10** (with reg. 28)
- F752** Sch. 7 para. 5 omitted (10.4.1989) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 10** (with reg. 28)
- F753** Word in Sch. 7 inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **23**
- F754** Words in Sch. 7 para. 9 substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **11(a)**
- F755** Words in Sch. 7 para. 9(a)(v) inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, 2, **Sch.**
- F756** Words in Sch. 7 para. 9(a)(v) added (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, **9(e)**
- F757** Words in Sch. 7 para. 10 omitted (11.4.1988) by virtue of [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), **regs. 1(1), 33(a)**
- F758** Words in Sch. 7 para. 10 substituted (1.1.1996) by [The Transfer of Functions \(Education and Employment\) Order 1995 \(S.I. 1995/2986\)](#), arts. 1, **6(5)**
- F759** Sch. 7 para. 10A amended (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(10), **Sch. 7 Pt. I**
- F760** Sch. 7 para. 10B(1)-(3) amended (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(10), **Sch. 7 Pt. I**
- F761** Sch. 7 para. 10B(4) omitted (1.4.1993) by virtue of [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), reg. 1(1), **Sch. 1 para. 6(b)**
- F762** Sch. 7 para. 10C amended (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(10), **Sch. 7 Pt. I**
- F763** Sch. 7 para. 10D inserted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **11(b)**
- F764** Sch. 7 para. 10D omitted (1.4.1993) by virtue of [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), reg. 1(1), **Sch. 1 para. 6(c)**
- F765** Words in Sch. 7 para. 11 inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **21(g)**
- F766** Words in Sch. 7 para. 11 substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **23(c)**

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- F767** Words in Sch. 7 para. 11 substituted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 13(c)**
- F768** Sch. 7 para. 11A inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **21(h)**
- F769** Words in Sch. 7 para. 11A substituted (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **19(a)** (with reg. 1(2))
- F770** Sch. 7 para. 12 substituted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **21(i)**
- F771** Sch. 7 para. 12A inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **21(j)**
- F772** Words in Sch. 7 para. 12A substituted (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **19(b)** (with reg. 1(2))
- F773** Sch. 7 para. 13 amended (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(10), **Sch. 7 Pt. I**
- F774** Sch. 7 para. 13A amended (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(10), **Sch. 7 Pt. I**
- F775** Sch. 7 para. 13B amended (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(10), **Sch. 7 Pt. I**
- F776** Sch. 7 para. 14 omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 13(e)**
- F777** Sch. 7 para. 15 omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 13(e)**
- F778** Words in Sch. 7 para. 16 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **21(3)**
- F779** Words in Sch. 7 para. 16 omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 13(f)(ii)**
- F780** Words in Sch. 7 para. 16 substituted (with effect in accordance with reg. 1(1)(a) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **9**
- F781** Words in Sch. 7 para. 16 substituted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), reg. 1(1), **Sch. 1 para. 6(d)**
- F782** Words in Sch. 7 para. 16(a) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **33(c)**
- F783** Words in Sch. 7 para. 16 substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **23(e)**
- F784** Sch. 7 para. 17(b)(ii) omitted (8.4.1991) by virtue of [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **13** (with reg. 1(2))
- F785** Words in Sch. 7 para. 17 substituted (10.4.1989) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 15(b)** (with reg. 28)
- F786** Words in Sch. 7 para. 17 substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **23(f)**
- F787** Words in Sch. 7 para. 17 substituted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 13(g)**
- F788** Sch. 7 para. 18 amended (with effect in accordance with art. 1(2)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), 18(10), **Sch. 7 Pt. I**
- F789** S.I. 1987/1968.
- F790** Words in Sch. 7 para. 19(b) substituted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **26(3)(a)** (with reg. 1(2))

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**F791** Words in Sch. 7 para. 19(b) substituted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **26(3)(b)** (with reg. 1(2))

## SCHEDULE 8

Regulations 36(2), 38(2) and 44(6)

### SUMS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS

**1.** In the case of a claimant who has been engaged in remunerative work as an employed earner [<sup>F792</sup>or, had the employment been in Great Britain, would have been so engaged]—

(a) any earnings paid or due to be paid [<sup>F793</sup>in respect of that employment which has terminated]—

(i) by way of retirement but only if on retirement he is entitled to a retirement pension under the Social Security Act, or would be so entitled if he satisfied the contribution conditions;

(ii) otherwise than by retirement except earnings to which regulation 35(1)(b) to (e) and [<sup>F794</sup>(g) to (i)] applies (earnings of employed earners);

[<sup>F795</sup>(b) where—

(i) the employment has not been terminated, but

(ii) the claimant is not engaged in remunerative work,

any earnings in respect of that employment except earnings to which regulation 35(1)(d) and (e) applies; but this sub-paragraph shall not apply where the claimant has been suspended from his employment.]

#### Textual Amendments

**F792** Words in Sch. 8 para. 1 inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **34(a)**

**F793** Words in Sch. 8 para. 1(a) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **24(a)**

**F794** Words in Sch. 8 para. 1(a)(ii) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **18**

**F795** Sch. 8 para. 1(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **22(2)**

#### Commencement Information

**I126** Sch. 8 para. 1 in force at 11.4.1988, see reg. 1

[<sup>F796</sup>**2.** In the case of a claimant who, before the date of claim—

(a) has been engaged in part-time employment as an employed earner or, where the employment has been outside Great Britain, would have been so engaged had the employment been in Great Britain, and

(b) has ceased to be engaged in that employment, whether or not that employment has been terminated,

any earnings in respect of that employment except any payment to which regulation 35(1)(e) applies; but this paragraph shall not apply where the claimant has been suspended from his employment.]



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### Textual Amendments

**F796** Sch. 8 para. 2 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **22(3)**

3. In the case of a claimant who has been engaged in remunerative work or part-time employment as a self-employed earner [<sup>F797</sup>or, had the employment been in Great Britain, would have been so engaged] and who has ceased to be so employed, from the date of the cessation of his employment any earnings derived from that employment except earnings to which regulation 30(2) (royalties etc.) applies.

### Textual Amendments

**F797** Words in Sch. 8 para. 3 inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **34(b)**

### Commencement Information

**I127** Sch. 8 para. 3 in force at 11.4.1988, see reg. 1

<sup>F798</sup>4.—(1) In a case to which this paragraph applies, £15; but notwithstanding regulation 23 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £15.

(2) This paragraph applies where the claimant's applicable amount includes, or but for his being an in-patient or in accommodation in a residential care home or nursing home or in residential accommodation would include, an amount by way of a disability premium under Schedule 2 (applicable amounts).

(3) This paragraph applies where—

(a) the claimant is a member of a couple, and—

(i) his applicable amount would include an amount by way of the disability premium under Schedule 2 but for the higher pensioner premium under that Schedule being applicable; or

(ii) had he not been an in-patient or in accommodation in a residential care home or nursing home or in residential accommodation his applicable amount would include the higher pensioner premium under that Schedule and had that been the case he would also satisfy the condition in (i) above; and

(b) he or his partner is under the age of 60 and at least one is engaged in part-time employment.

(4) This paragraph applies where—

(a) the claimant's applicable amount includes, or but for his being an in-patient or in accommodation in a residential care home or nursing home or in residential accommodation would include, an amount by way of the higher pensioner premium under Schedule 2; and

(b) the claimant or, if he is a member of a couple, either he or his partner has attained the age of 60; and

(c) immediately before attaining that age he or, as the case may be, he or his partner was engaged in part-time employment and the claimant was entitled by virtue of subparagraph (2) or (3) to a disregard of £15; and

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- (d) he or, as the case may be, he or his partner has continued in part-time employment.
- (5) This paragraph applies where—
- (a) the claimant is a member of a couple and—
- (i) his applicable amount would include an amount by way of the disability premium under Schedule 2 but for the pensioner premium for persons aged 75 and over under that Schedule being applicable; or
- (ii) had he not been an in-patient or in accommodation in a residential care home or nursing home or in residential accommodation his applicable amount would include the pensioner premium for persons aged 75 and over under that Schedule and had that been the case he would also satisfy the condition in (i) above; and
- (b) he or his partner has attained the age of 75 but is under the age of 80 and the other is under the age of 60 and at least one member of the couple is engaged in part-time employment.
- (6) This paragraph applies where—
- (a) the claimant is a member of a couple and he or his partner has attained the age of 75 but is under the age of 80 and the other has attained the age of 60; and
- (b) immediately before the younger member attained that age either member was engaged in part-time employment and the claimant was entitled by virtue of sub-paragraph (5) to a disregard of £15; and
- (c) either he or his partner has continued in part-time employment.
- [<sup>F799</sup>(7) For the purposes of this paragraph—
- (a) except where head (b) or (c) applies, no account shall be taken of any period not exceeding eight consecutive weeks occurring—
- (i) on or after the date on which the claimant or, if he is a member of a couple, he or his partner attained the age of 60 during which either was or both were not engaged in part-time employment or the claimant was not entitled to income support; or
- (ii) immediately after the date on which the claimant or his partner ceased to participate in arrangements for training made under section 2 of the Employment and Training Act 1973 [<sup>F800</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990] or to attend a course at an employment rehabilitation centre established under that section [<sup>F801</sup> of the 1973 Act];
- (b) in a case where the claimant has ceased to be entitled to income support because he, or if he is a member of a couple, he or his partner becomes engaged in remunerative work, no account shall be taken of any period, during which he was not entitled to income support, not exceeding the permitted period determined in accordance with regulation 3A (permitted period) occurring on or after the date on which the claimant or, as the case may be, his partner attained the age of 60;
- (c) no account shall be taken of any period occurring on or after the date on which the claimant or, if he is a member of a couple, he or his partner attained the age of 60 during which the claimant was not entitled to income support because he or his partner was participating in arrangements for training made under section 2 of the Employment and Training Act 1973 [<sup>F802</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990] or attending a course at an employment rehabilitation centre established under that section [<sup>F803</sup> of the 1973 Act].]

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### Textual Amendments

- F798** Sch. 8 para. 4 substituted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), regs. 1(1), **10**
- F799** Sch. 8 para. 4(7) substituted (with effect in accordance with reg. 1(1)(b) of the amending S.I.) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(b), **12(a)**
- F800** Words in Sch. 8 para. 4(7)(a)(ii) inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, 2, **Sch.**
- F801** Words in Sch. 8 para. 4(7)(a)(ii) inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, **9(f)(i)**
- F802** Words in Sch. 8 para. 4(7)(c) inserted (S.) (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, 2, **Sch.**
- F803** Words in Sch. 8 para. 4(7)(c) inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, **9(f)(ii)**

### Commencement Information

- I128** Sch. 8 para. 4 in force at 11.4.1988, see reg. 1

5. If an amount by way of a lone parent premium under Schedule 2 (applicable amounts) is, or but for the pensioner premium being applicable to him or for his accommodation in a residential care home, nursing home<sup>F804</sup> ...<sup>F805</sup> ... or in residential accommodation would be, included in the calculation of the claimant's applicable amount, £15.

### Textual Amendments

- F804** Words in Sch. 8 para. 5 omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 14(a)**
- F805** Words in Sch. 8 para. 5 omitted (10.4.1989) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), Sch. 1 para. 8(a) (with reg. 28)

### Commencement Information

- I129** Sch. 8 para. 5 in force at 11.4.1988, see reg. 1

6.—(1) In a case where paragraph 4 does not apply, if the claimant is one of a couple and both members of that couple are under age 60 and one of the couple has for a continuous period of two years been in receipt of income support in respect of a couple (whether or not the same couple) and during that period—

- (a) neither member has been engaged in remunerative work; or
- (b) neither member has been [<sup>F806</sup> in relevant education or a student];

for a period exceeding eight consecutive weeks, £15; but, notwithstanding regulation 23 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to one of the couple it shall not apply to the other except where, and to the extent that, the earnings of the one which are to be disregarded under this paragraph are less than £15;

[<sup>F807</sup>(2) For the purposes of this paragraph in determining whether one of a couple has been in receipt of income support for a continuous period of two years—

- (a) no account shall be taken of any period not exceeding eight weeks during which the claimant was not a member of a couple;

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- (b) subject to sub-paragraphs (2A) and (2C), no account shall be taken of any period not exceeding eight weeks during which the claimant was not in receipt of income support;
- (c) consecutive periods during which either member was in receipt of income support in respect of a couple shall be treated as periods during which one of that couple had been so in receipt.

(2A) Where—

- (a) a claimant has ceased to be in receipt of income support because he or the other member of the couple becomes engaged in remunerative work; and
- (b) immediately before ceasing to be so in receipt this paragraph applied to him,

sub-paragraph (2)(b) shall apply to him as if for the words “not exceeding eight weeks” there were substituted the words “not exceeding the permitted period determined in accordance with regulation 3A (permitted period)”.

(2B) In a case where sub-paragraph (2A) applies, sub-paragraph (1) shall apply as if for the words “a period exceeding eight consecutive weeks” there were substituted the words “a period exceeding the permitted period determined in accordance with regulation (3A)”.

(2C) For the purposes of this paragraph, where—

- (a) a claimant has ceased to be in receipt of income support because he or the other member of the couple is participating in arrangements for training made under section 2 of the Employment and Training Act 1973 [<sup>F808</sup>or section 2 of the Enterprise and New Towns (Scotland) Act 1990] or attending a course at an employment rehabilitation centre established under that section [<sup>F809</sup>of the 1973 Act]; and
- (b) immediately before ceasing to be so in receipt this paragraph applied to him,

he shall be treated as if he had been in receipt of income support in respect of a couple for the period during which he or his partner is participating in such arrangements or attending such a course and no account shall be taken of any period during that time in which the other member is engaged in remunerative work, in relevant education or a student.]

(3) For the purposes of this paragraph—

- (a) any period beginning before the commencement of these regulations during which the claimant or the other member of the couple was in receipt of supplementary benefit in respect of a couple, and immediately preceding the receipt of income support, is to be taken into account as if it were a period of income support except where during that period either the claimant or the other member was engaged in remunerative work or receiving relevant education within the meaning of section 6 of the Supplementary Benefits Act 1976 <sup>F810</sup>;
- (b) any period during which the claimant or the other member of the couple is in receipt of income support under the Social Security (Northern Ireland) Order 1986 <sup>F811</sup> or was in receipt of supplementary benefit under the Supplementary Benefit (Northern Ireland) Order 1977 <sup>F812</sup> and immediately preceding the receipt of income support is to be taken into account as if it were a period of income support;

and in determining whether any such period is continuous [<sup>F813</sup>sub-paragraphs (2) to (2C)] hereof shall apply by analogy.

#### Textual Amendments

**F806** Words in Sch. 8 para. 6(1)(b) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **12(b)(i)**

**F807** Sch. 8 para. 6(2)-(2C) substituted for Sch. 8 para. 6(2) (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), **12(b)(ii)**

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**F808** Words in Sch. 8 para. 6(2C)(a) inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, 2, [Sch.](#)

**F809** Words in Sch. 8 para. 6(2C)(a) inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, [9\(f\)\(iii\)](#)

**F810** 1976 c. 71; section 6 was substituted by section 6(1) and Schedule 2 Part I paragraph 6 of the [Social Security Act 1980 \(c. 30\)](#).

**F811** [S.I. 1986/1888 \(NI 18\)](#); the relevant amending instrument is [S.I. 1987/464 \(NI 8\)](#).

**F812** [S.I. 1977/2156 \(NI 27\)](#); the relevant amending instruments are [S.I. 1980/870 \(NI 18\)](#), [S.I. 1987/464 \(NI 8\)](#).

**F813** Words in Sch. 8 para. 6(3) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 3 Regulations 1989 \(S.I. 1989/1678\)](#), regs. 1(1)(a), [12\(b\)\(iii\)](#)

#### Commencement Information

**I130** Sch. 8 para. 6 in force at 11.4.1988, see reg. 1

**[<sup>F814</sup>6A.—**(1) In a case to which none of paragraphs 4 to 6 applies to the claimant, and subject to sub-paragraph (2), where the claimant's applicable amount includes an amount by way of the carer premium under Schedule 2 (applicable amounts), £15 of the earnings of the person who is, or at any time in the preceding eight weeks was, in receipt of invalid care allowance or treated in accordance with paragraph 14ZA(2) of that Schedule as being in receipt of invalid care allowance.

(2) Where the carer premium is awarded in respect of the claimant and of any partner of his, their earnings shall for the purposes of this paragraph be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) shall not exceed £15 of the aggregated amount.]

#### Textual Amendments

**F814** Sch. 8 paras. 6A, 6B inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), [8\(2\)](#)

**[<sup>F814</sup>6B.** Where the carer premium is awarded in respect of a claimant who is a member of a couple and whose earnings are less than £15, but is not awarded in respect of the other member of the couple, and that other member is engaged in an employment—

- (a) specified in paragraph 7(1), so much of the other member's earnings as would not when aggregated with the amount disregarded under paragraph 6A exceed £15;
- (b) other than one specified in paragraph 7(1), so much of the other member's earnings from such other employment up to £5 as would not when aggregated with the amount disregarded under paragraph 6A exceed £15.]

#### Textual Amendments

**F814** Sch. 8 paras. 6A, 6B inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), [8\(2\)](#)

**7.—**(1) In a case to which none of paragraphs [<sup>F815</sup>4 to 6B] applies to the claimant, £15 of earnings derived from one or more employments as—

- (a) a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Acts 1947 to 1959<sup>F816</sup>;

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- (b) an auxiliary coastguard in respect of coast rescue activities;
- (c) a person engaged part time in the manning or launching of a life boat;
- (d) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979<sup>F817</sup>;

but, notwithstanding regulation 23 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except to the extent specified in sub-paragraph (2).

(2) If the claimant's partner is engaged in employment—

- (a) specified in sub-paragraph (1) so much of his earnings as would not in aggregate with the amount of the claimant's earnings disregarded under this paragraph exceed £15;
- (b) other than one specified in sub-paragraph (1) so much of his earnings from that employment up to £5 as would not in aggregate with the claimant's earnings disregarded under this paragraph exceed £15.

#### Textual Amendments

**F815** Words in Sch. 8 para. 7 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), **8(3)**

**F816** 1947 c. 41, 1951 c. 27, 1959 c. 44.

**F817** S.I. 1979/591; Part I of Schedule 3 substituted by [S.I. 1980/1975](#).

#### Commencement Information

**I131** Sch. 8 para. 7 in force at 11.4.1988, see reg. 1

**8.** Where the claimant is engaged in one or more employments specified in paragraph 7(1) but his earnings derived from such employments are less than £15 in any week and he is also engaged in any other part-time employment so much of his earnings from that other employment up to £5 as would not in aggregate with the amount of his earnings disregarded under paragraph 7 exceed £15.

#### Commencement Information

**I132** Sch. 8 para. 8 in force at 11.4.1988, see reg. 1

**9.** In a case to which none of paragraphs 4 to 8 applies to the claimant, £5.

#### Commencement Information

**I133** Sch. 8 para. 9 in force at 11.4.1988, see reg. 1

**10.** Notwithstanding [<sup>F818</sup> paragraphs 6 to 7] or 9, where two or more payments of the same kind and from the same source are to be taken into account in the same benefit week, there shall be disregarded from each payment the sum specified in that paragraph; but this paragraph shall only apply in the case of a payment which it has not been practicable to treat under regulation 31(1)(b) (date on which income treated as paid) as paid on the first day of the benefit week in which it is due to be paid.

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**Textual Amendments**

**F818** Words in Sch. 8 para. 10 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), **8(4)**

**Commencement Information**

**I134** Sch. 8 para. 10 in force at 11.4.1988, see reg. 1

**11.** Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

**Commencement Information**

**I135** Sch. 8 para. 11 in force at 11.4.1988, see reg. 1

**12.** Where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

**Commencement Information**

**I136** Sch. 8 para. 12 in force at 11.4.1988, see reg. 1

**13.** Any earnings which is due to be paid before the date of claim and which would otherwise fall to be taken into account in the same benefit week as a payment of the same kind and from the same source.

**Commencement Information**

**I137** Sch. 8 para. 13 in force at 11.4.1988, see reg. 1

**14.** Any earnings of a child or young person except earnings to which paragraph 15 applies.

**Commencement Information**

**I138** Sch. 8 para. 14 in force at 11.4.1988, see reg. 1

**15.** [<sup>F819</sup>In the case of earnings of a child or young person who although not receiving full-time education for the purposes of section 2 of the Child Benefit Act 1975 (meaning of “child”) is nonetheless treated for the purposes of these Regulations as receiving relevant education and] who is engaged in remunerative work, if—

- (a) an amount by way of a disabled child premium under Schedule 2 (applicable amounts) is, or but for his accommodation in a [<sup>F820</sup>residential care home or nursing home] would be, included in the calculation of his applicable amount and his earning capacity is not, by reason of his disability, less than 75 per cent of that which he would, but for that disability normally be expected to earn, £15;
- (b) in any other case, £5.

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#### Textual Amendments

- F819** Words in Sch. 8 para. 15 substituted (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), 7 (with reg. 1(2))
- F820** Words in Sch. 8 para. 15 substituted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 14(b)**

#### Commencement Information

- I139** Sch. 8 para. 15 in force at 11.4.1988, see reg. 1

**16.** In this Schedule “part-time employment” means employment in which the person is not to be treated as engaged in remunerative work under regulation 5 or 6 (persons treated, or not treated, as engaged in remunerative work).

#### Commencement Information

- I140** Sch. 8 para. 16 in force at 11.4.1988, see reg. 1

## SCHEDULE 9

Regulation 40 (2)

### SUMS TO BE DISREGARDED IN THE CALCULATION OF INCOME OTHER THAN EARNINGS

**1.** Any amount paid by way of tax on income which is taken into account under regulation 40 (calculation of income other than earnings).

#### Commencement Information

- I141** Sch. 9 para. 1 in force at 11.4.1988, see reg. 1

- 2.** Any payment in respect of any expenses incurred by a claimant who is—
- engaged by a charitable or [<sup>F821</sup>voluntary organisation]; or
  - a volunteer,

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 42 (6) (notional income).

#### Textual Amendments

- F821** Words in [Sch. 9 para. 2](#) substituted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **27(a)** (with reg. 1(2))

#### Commencement Information

- I142** Sch. 9 para. 2 in force at 11.4.1988, see reg. 1

**3.** In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.



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**Commencement Information**

**I143** Sch. 9 para. 3 in force at 11.4.1988, see reg. 1

**4.** In the case of a payment of statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982 or statutory maternity pay under Part V of the Act or any remuneration paid by or on behalf of an employer to the claimant who for the time being is unable to work due to illness or maternity—

- (a) any amount deducted by way of primary Class 1 contributions under the Social Security Act;
- (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.

**Commencement Information**

**I144** Sch. 9 para. 4 in force at 11.4.1988, see reg. 1

<sup>[F822]</sup>**4A.** In the case of the payment of statutory sick pay under Part II of the Social Security (Northern Ireland) Order 1982 or statutory maternity pay under Part VI of the Social Security (Northern Ireland) Order 1986—

- (a) any amount deducted by way of primary Class 1 contributions under the Social Security (Northern Ireland) Act 1975;
- (b) one-half of any sum paid by way of a contribution towards an occupational or personal pension scheme.]

**Textual Amendments**

**F822** Sch. 9 para. 4A inserted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **35(a)**

**5.** Any housing benefit.

**Commencement Information**

**I145** Sch. 9 para. 5 in force at 11.4.1988, see reg. 1

**6.** Any mobility allowance [<sup>F823</sup>or the mobility component of disability living allowance].

**Textual Amendments**

**F823** Words in Sch. 9 para. 6 inserted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(6)(a)** (with reg. 1(2))

**Commencement Information**

**I146** Sch. 9 para. 6 in force at 11.4.1988, see reg. 1

**7.** Any concessionary payment made to compensate for the non-payment of—

- (a) any payment specified in [<sup>F824</sup>paragraph 6, 9 or 9A];

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(b) income support.

**Textual Amendments**

**F824** Words in Sch. 9 para. 7(a) substituted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(6)(b)** (with reg. 1(2))

**Commencement Information**

**I147** Sch. 9 para. 7 in force at 11.4.1988, see reg. 1

**8.** Any mobility supplement or any payment intended to compensate for the non-payment of such a supplement.

**Commencement Information**

**I148** Sch. 9 para. 8 in force at 11.4.1988, see reg. 1

<sup>F825</sup>**9.** Any attendance allowance or the care component of disability living allowance, but, where the claimant's applicable amount falls to be calculated in accordance with Part I of Schedule 4 <sup>F826</sup>or paragraph 13A of Schedule 7] only to the extent that it exceeds the amount for the time being specified as the higher rate of attendance allowance for the purposes of section 64(3) of the Social Security Contributions and Benefits Act 1992 or, as the case may, be the highest rate of the care component of disability living allowance for the purposes of section 72(4)(a) of that Act.]

**Textual Amendments**

**F825** Sch. 9 para. 9 substituted (1.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/518\)](#), regs. 1, **5(5)(a)**

**F826** Words in Sch. 9 para. 9 inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(9)(a)** (with reg. 8)

<sup>F827</sup>**9A.** .....

**Textual Amendments**

**F827** Sch. 9 para. 9A omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **23(2)**

**10.** Any payment to the claimant as holder of the Victoria Cross or George Cross or any analogous payment.

**Commencement Information**

**I149** Sch. 9 para. 10 in force at 11.4.1988, see reg. 1

**11.** Any sum in respect of a course of study attended by a child or young person payable by virtue of regulations made under section 81 of the Education Act 1944 <sup>F828</sup> (assistance by means of

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scholarships and otherwise), or by virtue of section 2 (1) of the Education Act 1962<sup>F829</sup> (awards for courses of further education) or section 49 of the Education (Scotland) Act 1980<sup>F830</sup> (power to assist persons to take advantage of educational facilities).

#### Textual Amendments

**F828** 1944 c. 31; section 81 was amended by S.I. 1964/490.

**F829** 1962 c. 12; section 2 (1) was substituted by section 19 of, and Schedule 5 to, the Education Act 1980 (c. 20).

**F830** 1980 c. 44.

#### Commencement Information

**I150** Sch. 9 para. 11 in force at 11.4.1988, see reg. 1

**12.** In the case of a claimant to whom regulation 9 (1) (persons treated as available for employment) applies, any sums intended for any expenditure specified in paragraph (2) of regulation 62 (calculation of grant income) necessary as a result of his attendance on his course.

#### Commencement Information

**I151** Sch. 9 para. 12 in force at 11.4.1988, see reg. 1

<sup>F831</sup>**13.** In the case of a claimant participating in arrangements for training made under section 2 of the Employment and Training Act 1973 [<sup>F832</sup>or section 2 of the Enterprise and New Towns (Scotland) Act 1990] or attending a course at an employment rehabilitation centre established under that section [<sup>F833</sup>of the 1973 Act]—

- (a) any travelling expenses reimbursed to the claimant;
- (b) any living away from home allowance under section 2(2)(d) [<sup>F834</sup>of the 1973 Act or section 2(4)(c) of the 1990 Act] but only to the extent that rent or rates payable in respect of accommodation not normally occupied by him as his home are not met by housing benefit;
- (c) any training premium,

but this paragraph, except in so far as it relates to a payment under subparagraph (a), (b) or (c), does not apply to any part of any allowance under section 2(2)(d) [<sup>F834</sup>of the 1973 Act or section 2(4)(c) of the 1990 Act].

#### Textual Amendments

**F831** Sch. 9 para. 13 substituted (11.4.1988) by The Income Support (General) Amendment Regulations 1988 (S.I. 1988/663), regs. 1(1), **35(b)**

**F832** Words in Sch. 9 para. 13 inserted (1.4.1991) by The Enterprise (Scotland) Consequential Amendments Order 1991 (S.I. 1991/387), arts. 1, 2, **Sch.**

**F833** Words in Sch. 9 para. 13 added (1.4.1991) by The Enterprise (Scotland) Consequential Amendments Order 1991 (S.I. 1991/387), arts. 1, **9(g)(i)**

**F834** Words in Sch. 9 para. 13 substituted (1.4.1991) by The Enterprise (Scotland) Consequential Amendments Order 1991 (S.I. 1991/387), arts. 1, **9(g)(ii)**

#### Commencement Information

**I152** Sch. 9 para. 13 in force at 11.4.1988, see reg. 1

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<sup>F835</sup>14. ....

#### Textual Amendments

**F835** Sch. 9 para. 14 omitted (with effect in accordance with reg. 1(4) of the amending S.I.) by virtue of [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(9)(b)** (with reg. 8)

<sup>F836</sup>15.—<sup>F837</sup>(1) Subject to sub-paragraph (3) and paragraphs 36, 37 and 39, [<sup>F838</sup>£20] of any charitable payment or of any voluntary payment made or due to be made at regular intervals, except any payment to which sub-paragraph (2) or paragraph 15A applies.]

(2) Subject to [<sup>F839</sup>sub-paragraphs (3) and (6)] and paragraph 39, any charitable payment or voluntary payment made or due to be made at regular intervals which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable, <sup>F840</sup>... any housing costs to the extent that they are met under regulation 17(1) (e) or 18(1)(f) (housing costs) or any accommodation charges to the extent that they are met under regulation 19 (persons in residential care or nursing homes)<sup>F841</sup>..., of a single claimant or, as the case may be, of the claimant or any other member of his family<sup>F842</sup>, or is used for any [<sup>F843</sup>council tax] or water charges for which that claimant or member is liable].

(3) Sub-paragraphs (1) and (2) shall not apply—

- (a) to a payment which is made by a person for the maintenance of any member of his family or of his former partner or of his children;
- (b) in the case of a person to whom section 23 of the Act (trade disputes) applies or in respect of whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by section 23A(b) of the Act (effect of return to work).

(4) For the purposes of sub-paragraph (1) where a number of charitable or voluntary payments fall to be taken into account in any one week they shall be treated as though they were one such payment.

(5) For the purposes of sub-paragraph (2) the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.]

<sup>F844</sup>(6) Sub-paragraph (2) shall apply to a claimant in a residential care home or nursing home only if his applicable amount falls to be calculated in accordance with regulation 19.]

#### Textual Amendments

**F836** Sch. 9 para. 15 substituted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **22(a)**

**F837** Sch. 9 para. 15(1) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **23(3)(a)**

**F838** Word in Sch. 9 para. 15(1) substituted (8.4.1996) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/462\)](#), regs. 1(2), **8(a)**

**F839** Words in Sch. 9 para. 15(2) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **23(3)(b)**

**F840** Words in Sch. 9 para. 15(2) omitted (7.10.1991) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **20(a)(i)** (with reg. 1(2))

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- F841** Words in Sch. 9 para. 15(2) omitted (with effect in accordance with reg. 1(3) of the amending S.I.) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(b), **9(2)**
- F842** Words in Sch. 9 para. 15(2) added (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **20(a)(ii)** (with reg. 1(2))
- F843** Words in Sch. 9 para. 15(2) substituted (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), reg. 1(1)(b), **Sch. para. 5(2)**
- F844** Sch. 9 para. 15(6) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **23(3)(c)**

#### Commencement Information

- I153** Sch. 9 para. 15 in force at 11.4.1988, see reg. 1

**[<sup>F845</sup>15A.—**(1) Subject to the following provisions of this paragraph, in the case of a claimant placed in a residential care home or nursing home by a local authority under section 26 of the National Assistance Act 1948, [<sup>F846</sup>sections 13A, 13B and 59(2)(c) of the Social Work (Scotland) Act 1968 or section 7 of the Mental Health (Scotland) Act 1984] any charitable payment or voluntary payment made or due to be made at regular intervals.

(2) This paragraph shall apply only where—

- (a) the claimant was placed in the residential care or nursing home by the local authority because the home was the preferred choice of the claimant, and
- (b) the cost of the accommodation was in excess of what the authority would normally expect to pay having regard to the needs of the claimant assessed in accordance with section 47 of the National Health Service and Community Care Act 1990.

(3) This paragraph shall not apply in the case of a person whose applicable amount falls to be calculated under regulation 19 (persons in residential care or nursing homes with preserved rights).

(4) The amount to be disregarded under sub-paragraph (1) shall not exceed the difference between the actual cost of the accommodation provided by the local authority and the cost the authority would normally incur for a person with the particular needs of the claimant.]

#### Textual Amendments

- F845** Sch. 9 para. 15A inserted (1.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/518\)](#), regs. 1, **5(5)(c)**
- F846** Words in Sch. 9 para. 15A inserted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **27(b)** (with reg. 1(2))

**[<sup>F847</sup>15B.—**(1) Subject to sub-paragraphs (2) and (3), where a claimant—

- (a) is a person to whom regulation 19 (preserved rights to income support) or paragraph 13A, 13B, 16 or 18 of Schedule 7 (applicable amounts in special cases) applies;
- (b) is not residing with his spouse; and
- (c) at least 50 per cent. of any occupational pension of his is being paid to, or in respect of, his spouse for that spouse's maintenance,

an amount equal to 50 per cent. of the pension or pensions concerned.

(2) Where a claimant is entitled to more than one occupational pension, those pensions shall be aggregated for the purposes of sub-paragraph (1).

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(3) This paragraph shall not have effect in respect of that part of any occupational pension to which a spouse is legally entitled whether under a court order or not.]

#### Textual Amendments

**F847** Sch. 9 para. 15B inserted (8.4.1996) by [The Income Support \(General\) Amendment Regulations 1996 \(S.I. 1996/606\)](#), regs. 1(1), 2 (with reg. 1(2))

[<sup>F848</sup>16. Subject to paragraphs 36 and 37, £10 of any of the following, namely—

- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 8 or 9);
- (b) a war widow's pension;
- (c) a pension payable to a person as a widow under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865 [<sup>F849</sup>or the Pensions and Yeomanry Pay Act 1884], or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977 and any power of Her Majesty otherwise than under an enactment 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 the armed forces of the Crown;
- (d) a payment made to compensate for the non-payment of such a pension as is mentioned in any of the preceding sub-paragraphs;
- (e) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions mentioned in sub-paragraphs (a) to (c) above;
- (f) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria.]

#### Textual Amendments

**F848** Sch. 9 para. 16 substituted (28.10.1995) by [The Income-related Benefits Schemes Amendment \(No. 2\) Regulations 1995 \(S.I. 1995/2792\)](#), regs. 1, 6(3)

**F849** Words in Sch. 9 para. 16(c) inserted (20.12.1995) by [The Income-related Benefits Schemes \(Widows' etc. Pensions Disregards\) Amendment Regulations 1995 \(S.I. 1995/3282\)](#), regs. 1, 2(1)(e)

17. Where a claimant receives income under an annuity purchased with a loan which satisfies the following conditions—

- (a) that the loan was made as part of a scheme under which not less than 90 per cent of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in this paragraph referred to as “the annuitants”) who include the person to whom the loan was made;
- (b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;
- (c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;
- (d) that the loan was secured on a dwelling in Great Britain and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling; and

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(e) that the person to whom the loan was made or one of the annuitants occupies the accommodation on which it was secured as his home at the time the interest is paid, the amount, calculated on a weekly basis equal to—

[<sup>F850</sup>(i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988 (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;]

(ii) in any other case the interest which is payable on the loan without deduction of such a sum.

#### Textual Amendments

**F850** Sch. 9 para. 17(i) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(a), **32(2)**

#### Commencement Information

**I154** Sch. 9 para. 17 in force at 11.4.1988, see reg. 1

[<sup>F851</sup>**18.** Any payment made to the claimant by a person who normally resides with the claimant, which is a contribution towards that person's living and accommodation costs, except where that person is residing with the claimant in circumstances to which paragraph 19 or 20 refers.]

#### Textual Amendments

**F851** Sch. 9 para. 18 substituted (10.4.1995) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1995 (S.I. 1995/516), regs. 1(1)(a), **27(c)** (with reg. 1(2))

[<sup>F852</sup>**19.** Where the claimant occupies a dwelling as his home and the dwelling is also occupied by [<sup>F853</sup>another person] and there is a contractual liability to make payments to the claimant in respect of the occupation of the dwelling by that person or a member of his family—

(a) £4 of the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family; and

(b) a further [<sup>F854</sup>£9.25], where the aggregate of any such payments is inclusive of an amount for heating.]

#### Textual Amendments

**F852** Sch. 9 para. 19 substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527), regs. 1(1)(b), **9(3)**

**F853** Words in Sch. 9 para. 19 substituted (10.4.1995) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1995 (S.I. 1995/516), regs. 1(1)(a), **27(d)** (with reg. 1(2))

**F854** Sum in Sch. 9 para. 19(b) substituted (coming into force in accordance with art. 1(2)(g) of the amending S.I.) by The Social Security Benefits Up-rating Order 1996 (S.I. 1996/599), arts. 1(2)(g), **18(13)**

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### Commencement Information

**I155** Sch. 9 para. 19 in force at 11.4.1988, see reg. 1

<sup>F855</sup>**20.** Where the claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to—

- (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20.00, 100% of such payments; or
- (b) where the aggregate of any such payments exceeds £20.00, £20.00 and 50% of the excess over £20.00.]

### Textual Amendments

**F855** Sch. 9 para. 20 substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(b), 9(4)

### Commencement Information

**I156** Sch. 9 para. 20 in force at 11.4.1988, see [reg. 1](#)

<sup>F856</sup>**21.**—(1) Subject to sub-paragraph (2), except where regulation 42(4)(a)(i) (notional income) applies or in the case of a person to whom section 23 of the Act (trade disputes) applies, any income in kind;

(2) The exception under sub-paragraph (1) shall not apply where the income in kind is received from the Macfarlane Trust<sup>F857</sup>, the Macfarlane (Special Payments) Trust<sup>F858</sup>, the Macfarlane (Special Payments) (No. 2) Trust<sup>F859</sup>, the Fund<sup>F860</sup>, the Eileen Trust<sup>F861</sup> or <sup>F862</sup>the Independent Living Funds].]

### Textual Amendments

**F856** Sch. 9 para. 21 substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), 35(d)

**F857** Words in Sch. 9 para. 21(2) inserted (31.1.1990) by [The Income-related Benefits Schemes Amendment Regulations 1990 \(S.I. 1990/127\)](#), regs. 1(1), 3(3)(e)

**F858** Words in Sch. 9 para. 21(2) inserted (11.5.1991) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1991 \(S.I. 1991/1175\)](#), regs. 1(1), 5(7)(a)

**F859** Words in Sch. 9 para. 21(2) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), 6(7)(a)

**F860** Words in Sch. 9 para. 21(2) inserted (14.5.1993) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1993 \(S.I. 1993/1249\)](#), regs. 1(1)(a), 4(4)(a)

**F861** Words in Sch. 9 para. 21(2) inserted (9.6.1988) by [The Family Credit and Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/999\)](#), regs. 1(1), 5(d)

**F862** Words in Sch. 9 para. 21(2) substituted (22.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/963\)](#), regs. 1, 2(3)(4)

### Commencement Information

**I157** Sch. 9 para. 21 in force at 11.4.1988, see reg. 1



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**22.**—(1) Any income derived from capital to which the claimant is or is treated under regulation 52 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraph 1, 2, 4, 6 [<sup>F863</sup>12 or 25 to 28] of Schedule 10.

(2) Income derived from capital disregarded under paragraph 2 [<sup>F864</sup>4 or 25 to 28] of Schedule 10 but [<sup>F865</sup>only to the extent of—

(a) any mortgage repayments made in respect of the dwelling or premises in the period during which that income accrued; or

(b) any council tax or water charges which the claimant is liable to pay in respect of the dwelling or premises and which are paid in the period during which that income accrued.]

[<sup>F866</sup>(3) The definition of “water charges” in regulation 2(1) shall apply to sub-paragraph (2) with the omission of the words “in so far as such charges are in respect of the dwelling which a person occupies as his home”.]

#### Textual Amendments

**F863** Words in Sch. 9 para. 22(1) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **25(a)(i)**

**F864** Words in Sch. 9 para. 22(2) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **25(a)(ii)**

**F865** Words in Sch. 9 para. 22(2) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(b)(c), **9(2)**

**F866** Sch. 9 para. 22(3) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(b)(c), **9(3)**

#### Commencement Information

**I158** Sch. 9 para. 22 in force at 11.4.1988, see reg. 1

**23.** Any income which is payable in a country outside the United Kingdom for such period during which there is prohibition against the transfer to the United Kingdom of that income.

#### Commencement Information

**I159** Sch. 9 para. 23 in force at 11.4.1988, see reg. 1

**24.** Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

#### Commencement Information

**I160** Sch. 9 para. 24 in force at 11.4.1988, see reg. 1

**25.**—(1) Any payment made to the claimant in respect of a child or young person who is a member of his family—

[<sup>F867</sup>(a) in accordance with regulations made pursuant to section 57A of the Adoption Act 1976(permitted allowances) or with a scheme approved by the Secretary of State under section 51 of the Adoption (Scotland) Act 1978(schemes for payment of allowances to adopters);

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(b) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 (local authority contribution to a child's maintenance where the child is living with a person as a result of a residence order);] to the extent specified in sub-paragraph (2).

(2) In the case of a child or young person—

- (a) to whom regulation 44 (5) (capital in excess of £3,000) applies, the whole payment;
- (b) to whom that regulation does not apply, so much of the weekly amount of the payment as exceeds the applicable amount in respect of that child or young person and where applicable to him any amount by way of a disabled child premium.

#### Textual Amendments

**F867** Sch. 9 para. 25(1)(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), Sch. para. 9(a), (with Sch. para. 11)

#### Commencement Information

**I161** Sch. 9 para. 25 in force at 11.4.1988, see [reg. 1](#)

**26.** Any payment made by a local authority to the claimant with whom a person is [<sup>F868</sup>accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989 (provision of accommodation and maintenance for a child whom they are looking after)] or, as the case may be, [<sup>F869</sup>section 21] of the Social Work (Scotland) Act 1968 <sup>F870</sup> or by a voluntary organisation under [<sup>F871</sup>section 59(1)(a) of the 1989 Act (provision of accommodation by voluntary organisations)] or by a care authority under regulation 9 of the Boarding Out and Fostering of Children (Scotland) Regulations 1985 <sup>F872</sup> (provision of accommodation and maintenance for children in care).

#### Textual Amendments

**F868** Words in Sch. 9 para. 26 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **Sch. para. 9(b)(i)** (with **Sch. para. 11**)

**F869** Words in Sch. 9 para. 26 substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **25(b)**

**F870** 1968 c. 49.

**F871** Words in Sch. 9 para. 26 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **Sch. para. 9(b)(ii)** (with **Sch. para. 11**)

**F872** S.I. 1985/1799.

#### Commencement Information

**I162** Sch. 9 para. 26 in force at 11.4.1988, see [reg. 1](#)

**27.** Any payment made by a health authority, local authority or voluntary organisation to the claimant in respect of a person who is not normally a member of the claimant's household but is temporarily in his care.

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### Commencement Information

**I163** Sch. 9 para. 27 in force at 11.4.1988, see reg. 1

**28.** Except in the case of a person to whom section 23 of the Act (trade disputes) applies [<sup>F873</sup>or in respect of whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by section 23A(b) of the Act (effect of return to work)], [<sup>F874</sup>any payment made by a local authority [<sup>F875</sup>in accordance with section 17 or 24 of the Children Act 1989] or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care).]

### Textual Amendments

**F873** Words in Sch. 9 para. 28 substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **35(c)**

**F874** Words in Sch. 9 para. 28 substituted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **12**

**F875** Words in Sch. 9 para. 28 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), **Sch. para. 9(c)**

### Commencement Information

**I164** Sch. 9 para. 28 in force at 11.4.1988, see reg. 1

[<sup>F876</sup>**29.**—(1) Subject to sub-paragraph (2) any payment received under an insurance policy, taken out to insure against the risk of being unable to maintain repayments on a loan which qualifies under paragraph 15 or 16 of Schedule 3 (housing costs in respect of loans to acquire an interest in a dwelling, or for repairs and improvements to the dwelling, occupied as the home) and used to meet such repayments, to the extent that it does not exceed the aggregate of—

- (a) the amount, calculated on a weekly basis, of any interest on that loan which is in excess of the amount met in accordance with Schedule 3 (housing costs);
- (b) the amount of any payment, calculated on a weekly basis, due on the loan attributable to the repayment of capital; and
- (c) any amount due by way of premiums on—
  - (i) that policy, or
  - (ii) a policy of insurance taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as his home.

(2) This paragraph shall not apply to any payment which is treated as possessed by the claimant by virtue of regulation 42(4)(a)(ii) (notional income).]

### Textual Amendments

**F876** Sch. 9 para. 29 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Income Support and Claims and Payments\) Amendment Regulations 1995 \(S.I. 1995/1613\)](#), reg. 1(1), **Sch. 3**

[<sup>F877</sup>**30.**—(1) Except where paragraph 29 applies, and subject to sub-paragraph (2), any payment made to the claimant which is intended to be used and is used as a contribution towards—

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- (a) any payment due on a loan if secured on the dwelling occupied as the home which does not qualify under Schedule 3 (housing costs);
  - (b) any interest payment or charge which qualifies in accordance with paragraphs 15 to 17 of Schedule 3 to the extent that the payment or charge is not met;
  - (c) any payment due on a loan which qualifies under paragraph 15 or 16 of Schedule 3 attributable to the payment or capital;
  - (d) any amount due by way of premiums on—
    - (i) [<sup>F878</sup>an insurance policy taken out to insure against the risk of being unable to make the payments referred to in (a) to (c) above;] or
    - (ii) a policy of insurance taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as his home.
  - (e) his rent in respect of the dwelling occupied by him as his home but only to the extent that it is not met by housing benefit; or his accommodation charge but only to the extent that the actual charge increased, where appropriate, in accordance with paragraph 2 of Schedule 4 exceeds the amount determined in accordance with regulation 19 (residential care and nursing homes) or the amount payable by a local authority in accordance with Part III of the National Assistance Act 1948.
- (2) This paragraph shall not apply to any payment which is treated as possessed by the claimant by virtue of regulation 42(4)(a)(ii) (notional income).]

#### Textual Amendments

**F877** Sch. 9 para. 30 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Income Support and Claims and Payments\) Amendment Regulations 1995 \(S.I. 1995/1613\)](#), reg. 1(1), [Sch. 3](#)

**F878** Words in Sch. 9 para. 30(1)(d) substituted (12.12.1995) by [The Social Security \(Income Support, Claims and Payments and Adjudication\) Amendment Regulations 1995 \(S.I. 1995/2927\)](#), regs. 1(1), [6](#)

[<sup>F879</sup>**30A.**—(1) Subject to sub-paragraphs (2) and (3), in the case of a claimant in a residential care home or nursing home, any payment, whether or not the payment is charitable or voluntary but not a payment to which paragraph 15A applies, made to the claimant which is intended to be used and is used to meet the cost of maintaining the claimant in that home.

(2) This paragraph shall not apply to a claimant for whom accommodation in a residential care home or nursing home is provided by a local authority under section 26 of the National Assistance Act 1948, or whose applicable amount falls to be calculated in accordance with regulation 19.

(3) The amount to be disregarded under this paragraph shall not exceed the difference between—

- (a) the claimant's applicable amount less any of the amounts referred to in paragraph 13 of Schedule 4 (personal allowances) which would be applicable to the claimant if his applicable amount fell to be calculated in accordance with that Schedule, and
- (b) the weekly charge for the accommodation.]

#### Textual Amendments

**F879** Sch. 9 para. 30A added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), [23\(6\)](#)

[<sup>F880</sup>**31.** Any social fund payment made pursuant to Part III of the Act.]

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#### Textual Amendments

**F880** Sch. 9 para. 31 substituted (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **8(2)** (with reg. 1(2))

#### Commencement Information

**I165** Sch. 9 para. 31 in force at 11.4.1988, see reg. 1

**32.** Any payment of income which under regulation 48 (income treated as capital) is to be treated as capital.

#### Commencement Information

**I166** Sch. 9 para. 32 in force at 11.4.1988, see reg. 1

**33.** Any payment under paragraph 2 of Schedule 6 to the Act (pensioner's Christmas bonus).

#### Commencement Information

**I167** Sch. 9 para. 33 in force at 11.4.1988, see reg. 1

**34.** In the case of a person to whom section 23 of the Act (trade disputes) applies and for so long as it applies, any payment up to the amount of the relevant sum within the meaning of subsection 6 of that section made by a trade union; but, notwithstanding regulation 23 (calculation of income and capital of members of claimant's family and of a polyamous marriage) if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the amount to be disregarded under this paragraph is less than the relevant sum.

#### Commencement Information

**I168** Sch. 9 para. 34 in force at 11.4.1988, see reg. 1

**35.** Any payment which is due to be paid before the date of claim which would otherwise fall to be taken into account in the same benefit week as a payment of the same kind and from the same source.

#### Commencement Information

**I169** Sch. 9 para. 35 in force at 11.4.1988, see reg. 1

**36.** The total of a claimant's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 23 (3) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 63 (2) (b) and 64 (1) (c) (calculation of covenant income where a contribution assessed)<sup>F881</sup>, regulation 66A(2) (treatment of student loans) and <sup>F882</sup>paragraphs 15(1)] and 16 shall in no case exceed <sup>F883</sup>£20] per week.

#### Textual Amendments

**F881** Words in Sch. 9 para. 36 inserted (1.9.1990) by [The Income-Related Benefits Amendment Regulations 1990 \(S.I. 1990/1657\)](#), regs. 1, **5(4)**

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**F882** Words in Sch. 9 para. 36 substituted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **22(d)(i)**

**F883** Word in Sch. 9 para. 36 substituted (8.4.1996) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/462\)](#), regs. 1(2), **8(a)**

#### Commencement Information

**I170** Sch. 9 para. 36 in force at 11.4.1988, see reg. 1

**37.** Notwithstanding paragraph 36 where two or more payments of the same kind and from the same source are to be taken into account in the same benefit week, there shall be disregarded from each payment the sum which would otherwise fall to be disregarded under this Schedule; but this paragraph shall only apply in the case of a payment which it has not been practicable to treat under regulation 31 (1) (b) (date on which income treated as paid) as paid on the first day of the benefit week in which it is due to be paid.

#### Commencement Information

**I171** Sch. 9 para. 37 in force at 11.4.1988, see reg. 1

<sup>[F884]</sup>**38.** Any resettlement benefit which is paid to the claimant by virtue of regulation 3 of the Social Security (Hospital In-Patients) Amendment (No. 2) Regulations 1987.]

#### Textual Amendments

**F884** Sch. 9 paras. 38, 39 added (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **35(f)**

<sup>[F885]</sup>**39.**—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), <sup>[F886]</sup>the Fund<sup>[F887]</sup>, the Eileen Trust]] or <sup>[F888]</sup>the Independent Living Funds].

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia <sup>[F886]</sup>or who is or was a qualifying person], which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person’s partner or former partner from whom he is not, or where that person has died was not, estranged or divorced;
- (b) any child who is a member of that person’s family or who was such a member and who is a member of the claimant’s family; or
- (c) any young person who is a member of that person’s family or who was such a member and who is a member of the claimant’s family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia <sup>[F889]</sup>or who is or was a qualifying person] provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, which derives a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or fro the benefit of—

- (a) the person who is suffering from haemophilia <sup>[F890]</sup>or who is a qualifying person];
- (b) any child who is a member of that person’s family or who was such a member and who is a member of the claimant’s family; or

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- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.
- (4) Any payment by a person who is suffering from haemophilia [<sup>F891</sup>or who is a qualifying person], which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—
- (a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child or young person who is or had been a member of that person's family; and
  - (b) the payment is made either—
    - (i) to that person's parent or step-parent, or
    - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person's death.

- (5) Any payment out of the estate of a person who suffered from haemophilia [<sup>F891</sup>or who was a qualifying person], which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent, or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

- (6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.]

[<sup>F892</sup>(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund [<sup>F893</sup>and the Eileen Trust].]

#### Textual Amendments

- F885** Sch. 9 para. 39 substituted (11.5.1991) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1991 \(S.I. 1991/1175\)](#), regs. 1(1), **5(7)(b)**
- F886** Words in Sch. 9 para. 39(1)(2) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(7)(b)(i)(ii)**
- F887** Words in Sch. 9 para. 39(1) inserted (14.5.1993) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1993 \(S.I. 1993/1249\)](#), regs. 1(1)(a), **4(4)(b)(i)**
- F888** Words in Sch. 9 para. 39(1) substituted (22.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/963\)](#), regs. 1, **2(3)(4)**
- F889** Words in Sch. 9 para. 39(3) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(7)(b)(iii)(aa)**
- F890** Words in Sch. 9 para. 39(3)(a) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(7)(b)(iii)(bb)**
- F891** Words in Sch. 9 para. 39(4)(5) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(7)(b)(iv)(v)**

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**F892** Sch. 9 para. 39(7) added (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(7)(b)(vi)**

**F893** Words in Sch. 9 para. 39(7) added (14.5.1993) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1993 \(S.I. 1993/1249\)](#), regs. 1(1)(a), **4(4)(b)(ii)**

[<sup>F894</sup>**40.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.]

**Textual Amendments**

**F894** Sch. 9 para. 40 added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **25(d)**

[<sup>F895</sup>**41.** Any payment made by the Secretary of State to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April 1988 but who did not become entitled to income support in respect of a period beginning with that day.]

**Textual Amendments**

**F895** Sch. 9 paras. 41-44 added (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **22(b)**

[<sup>F895</sup>**42.** Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983.]

**Textual Amendments**

**F895** Sch. 9 paras. 41-44 added (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **22(b)**

[<sup>F895</sup>**43.** Any payment made to a juror or a witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.]

**Textual Amendments**

**F895** Sch. 9 paras. 41-44 added (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **22(b)**

<sup>F896</sup>**44.** .....

**Textual Amendments**

**F896** Sch. 9 para. 44 omitted (1.4.1993) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), reg. 1(1)(b), **Sch. para. 5(3)**

[<sup>F897</sup>**45.** Any community charge benefit.]



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### Textual Amendments

**F897** Sch. 9 paras. 45-47 added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(a), **22(e)**

[<sup>F897</sup>**46.** Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988 or section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987 (reduction of liability for personal community charges) [<sup>F898</sup>or reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992 (reduction of liability for council tax)].]

### Textual Amendments

**F897** Sch. 9 paras. 45-47 added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(a), **22(e)**

**F898** Words in Sch. 9 para. 46 added (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), reg. 1(1)(b), **Sch. para. 5(4)**

[<sup>F897</sup>**47.** Any special war widows payment made under—

- (a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865;
- (b) the Royal Warrant dated 19th February 1990 amending the Schedule to the Army Pensions Warrant 1977;
- (c) the Queen's Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917;
- (d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980;
- (e) the Orders dated 19th February 1990 amending Orders made on 12th December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980;

and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under the provisions mentioned in sub- paragraphs (a) to (e) of this paragraph.]

### Textual Amendments

**F897** Sch. 9 paras. 45-47 added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(a), **22(e)**

[<sup>F899</sup>**48.**—(1) Any payment or repayment made—

- (a) as respects England and Wales, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988 (travelling expenses and health service supplies);
- (b) as respects Scotland, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988 (travelling expenses and health service supplies).

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(2) Any payment or repayment made by the Secretary of State for Health, the Secretary of State for Scotland or the Secretary of State for Wales which is analogous to a payment or repayment mentioned in sub-paragraph (1).]

#### Textual Amendments

**F899** Sch. 9 paras. 48-50 added (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **10(b)** (with reg. 1(2))

[<sup>F899</sup>49. Any payment made under regulation 9 to 11 or 13 of the Welfare Food Regulations 1988 (payments made in place of milk tokens or the supply of vitamins).]

#### Textual Amendments

**F899** Sch. 9 paras. 48-50 added (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **10(b)** (with reg. 1(2))

[<sup>F899</sup>50. Any payment made either by the Secretary of State for the Home Department or by the Secretary of State for Scotland under a scheme established to assist relatives and other persons to visit persons in custody.]

#### Textual Amendments

**F899** Sch. 9 paras. 48-50 added (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **10(b)** (with reg. 1(2))

[<sup>F900</sup>51. Any payment (other than a training allowance) made, whether by the Secretary of State or by any other person, under the Disabled Persons (Employment) Act 1944 or in accordance with arrangements made under section 2 of the Employment and Training Act 1973 to assist disabled persons to obtain or retain employment despite their disability.]

#### Textual Amendments

**F900** Sch. 9 para. 51 added (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **8(3)** (with reg. 1(2))

[<sup>F901</sup>52. Any council tax benefit.]

#### Textual Amendments

**F901** Sch. 9 para. 52 added (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), reg. 1(1)(b), **Sch. para. 5(5)**

[<sup>F902</sup>53. Where the claimant is in receipt of any benefit under Parts II, III or V of the Contributions and Benefits Act [<sup>F903</sup>or pension under the Naval Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983], any increase in the rate of that benefit arising under Part IV (increases for dependants) or section 106(a) (unemployability supplement) of that Act [<sup>F904</sup>or the rate of that pension under that Order] where the dependant in respect of whom the increase is paid is not a member of the claimant's family.]

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#### Textual Amendments

- F902** Sch. 9 para. 53 added (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(b), **9(5)**
- F903** Words in [Sch. 9 para. 53](#) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(9)(c)(i)** (with reg. 8)
- F904** Words in [Sch. 9 para. 53](#) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(9)(c)(ii)** (with reg. 8)

<sup>[F905]</sup>**54.** Any supplementary pension under article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

#### Textual Amendments

- F905** Sch. 9 paras. 54-56 added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **32(3)**

**55.** In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

#### Textual Amendments

- F905** Sch. 9 paras. 54-56 added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **32(3)**

**56.—**(1) Any payment which is—

- (a) made under any of the Dispensing Instruments to a widow of a person—
- (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
  - (ii) whose service in such capacity terminated before 31st March 1973; and
- (b) equal to the amount specified in article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

(2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1992 (exceptional grants of pay, non-effective pay and allowances).]

#### Textual Amendments

- F905** Sch. 9 paras. 54-56 added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **32(3)**

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## SCHEDULE 10

Regulation 46(2)

## CAPITAL TO BE DISREGARDED

1. The dwelling occupied as the home but, notwithstanding regulation 23 (calculation of income and capital of members of claimant's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

**Commencement Information**

**I172** Sch. 10 para. 1 in force at 11.4.1988, see reg. 1

2. Any premises acquired for occupation by the claimant which he intends to occupy [<sup>F906</sup>as his home] within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises.

**Textual Amendments**

**F906** Words in Sch. 10 para. 2 inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **26(a)**

**Commencement Information**

**I173** Sch. 10 para. 2 in force at 11.4.1988, see reg. 1

3. Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the claimant as his home which is to be used for the purchase of other premises intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase.

**Commencement Information**

**I174** Sch. 10 para. 3 in force at 11.4.1988, see reg. 1

4. Any premises occupied in whole or in part by—

- (a) a partner or relative of [<sup>F907</sup>a single claimant or any member of] the family [<sup>F908</sup>as his home] where that person is aged 60 or over or is incapacitated;
- (b) the former partner of a claimant <sup>F909</sup>... as his home; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced.

**Textual Amendments**

**F907** Words in Sch. 10 para. 4(a) substituted (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **11(a)** (with reg. 1(2))

**F908** Words in Sch. 10 para. 4(a) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **26(b)**

**F909** Words in Sch. 10 para. 4(b) omitted (30.5.1988) by virtue of [The Income Support \(General\) Amendment No. 2 Regulations 1988 \(S.I. 1988/910\)](#), regs. 1(1), **3(a)**

**Commencement Information**

**I175** Sch. 10 para. 4 in force at 11.4.1988, see reg. 1

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[<sup>F910</sup>5. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted in subsisting lease or tenancy, including sub-leases or sub-tenancies,]

#### Textual Amendments

**F910** Sch. 10 para. 5 substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(10)(a)** (with reg. 8)

6.—(1) The assets of any business owned in whole or in part by the claimant and for the purposes of which he is engaged as a self-employed earner or, if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

[<sup>F911</sup>(2) The assets of any business owned in whole or in part by the claimant where—

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

for a period of 26 weeks from the date on which the claim for income support is made, or is treated as made, or, if it is unreasonable to expect him to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so engaged or re-engaged.]

#### Textual Amendments

**F911** Sch. 10 para. 6(2) added (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **11(b)** (with reg. 1(2))

#### Commencement Information

**I176** Sch. 10 para. 6 in force at 11.4.1988, see reg. 1

7. Any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of—

- (a) any payment specified in paragraph 6, [<sup>F912</sup> 8, 9 or 9A] of Schedule 9 (other income to be disregarded);
- (b) an income-related benefit or supplementary benefit, family income supplement under the Family Income Supplements Act 1970 <sup>F913</sup> or housing benefit under Part II of the Social Security and Housing Benefits Act 1982;

but only for a period of 52 weeks from the date of the receipt of the arrears or of the concessionary payment.

#### Textual Amendments

**F912** Words in Sch. 10 para. 7(a) substituted (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **11(7)** (with reg. 1(2))

**F913** 1970 c. 55.

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**Commencement Information**

**I177** Sch. 10 para. 7 in force at 11.4.1988, see reg. 1

**8.** Any sum—

- (a) paid to the claimant in consequence of damage to, or loss of the home or any personal possession and intended for its repair or replacement; or
- (b) acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvements to the home, and which is to be used for the intended purpose, for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to enable the claimant to effect the repairs, replacement or improvements.

**Commencement Information**

**I178** Sch. 10 para. 8 in force at 11.4.1988, see reg. 1

**9.** Any sum—

- (a) deposited with a housing association as defined in section 1(1) of the Housing Associations Act 1985 <sup>F914</sup> or section 338(1) of the Housing (Scotland) Act 1987 <sup>F915</sup> as a condition of occupying the home;
- (b) which was so deposited and which is to be used for the purchase of another home, for the period of 26 weeks or such longer period as is reasonable in the circumstances to complete the purchase.

**Textual Amendments**

**F914** 1985 c. 69.

**F915** 1987 c. 26.

**Commencement Information**

**I179** Sch. 10 para. 9 in force at 11.4.1988, see reg. 1

**10.** Any personal possessions except those which had or have been acquired by the claimant with the intention of reducing his capital in order to secure entitlement to supplementary benefit or income support or to increase the amount of that benefit.

**Commencement Information**

**I180** Sch. 10 para. 10 in force at 11.4.1988, see reg. 1

**11.** The value of the right to receive any income under an annuity and the surrender value (if any) of such an annuity.

**Commencement Information**

**I181** Sch. 10 para. 11 in force at 11.4.1988, see reg. 1

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[<sup>F916</sup>12. Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant, the value of the trust fund and the value of the right to receive any payment under that trust.]

**Textual Amendments**

**F916** Sch. 10 para. 12 substituted (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), **reg. 11(c)** (with reg. 1(2))

**Commencement Information**

**I182** Sch. 10 para. 12 in force at 11.4.1988, see reg. 1

13. The value of the right to receive any income under a life interest or from a liferent.

**Commencement Information**

**I183** Sch. 10 para. 13 in force at 11.4.1988, see reg. 1

14. The value of the right to receive any income which is disregarded under paragraph 11 of Schedule 8 or paragraph 23 of Schedule 9 (earnings or other income to be disregarded).

**Commencement Information**

**I184** Sch. 10 para. 14 in force at 11.4.1988, see reg. 1

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

**Commencement Information**

**I185** Sch. 10 para. 15 in force at 11.4.1988, see reg. 1

16. Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

**Commencement Information**

**I186** Sch. 10 para. 16 in force at 11.4.1988, see reg. 1

17. Except in the case of a person to whom section 23 of the Act (trade disputes) applies [<sup>F917</sup>or in respect of whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by section 23A(b) of the Act (effect of return to work)], [<sup>F918</sup>any payment made by a local authority [<sup>F919</sup>in accordance with section 17 or 24 of the Children Act 1989] or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care).]

**Textual Amendments**

**F917** Words in Sch. 10 para. 17 substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **36(a)**

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**F918** Words in Sch. 10 para. 17 substituted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **12**

**F919** Words in Sch. 10 para. 17 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), **Sch. para 10**

#### Commencement Information

**I187** Sch. 10 para. 17 in force at 11.4.1988, see [reg. 1](#)

[<sup>F920</sup>**18.** Any social fund payment made pursuant to Part III of the Act.]

#### Textual Amendments

**F920** Sch. 10 para. 18 substituted (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **9(2)** (with [reg. 1\(2\)](#))

#### Commencement Information

**I188** Sch. 10 para. 18 in force at 11.4.1988, see [reg. 1](#)

**19.** Any refund of tax which falls to be deducted under section 26 of the Finance Act 1982 <sup>F921</sup> (deductions of tax from certain loan interest) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements in the home.

#### Textual Amendments

**F921** 1982 c. 39.

#### Commencement Information

**I189** Sch. 10 para. 19 in force at 11.4.1988, see [reg. 1](#)

**20.** Any capital which under [<sup>F922</sup>regulation 41, 44(1) or 66A (capital treated as income, modifications in respect of children and young persons or treatment of student loans)] is to be treated as income.

#### Textual Amendments

**F922** Words in Sch. 10 para. 20 substituted (1.9.1990) by [The Social Security Benefits \(Student Loans and Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/1549\)](#), regs. 1(1)(a), **5(9)** (with [reg. 7\(1\)](#))

#### Commencement Information

**I190** Sch. 10 para. 20 in force at 11.4.1988, see [reg. 1](#)

**21.** Where a payment of capital is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

#### Commencement Information

**I191** Sch. 10 para. 21 in force at 11.4.1988, see [reg. 1](#)



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[<sup>F923</sup>22.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), [<sup>F924</sup>the Fund[<sup>F925</sup>, the Eileen Trust]] or [<sup>F926</sup>the Independent Living Funds].

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia [<sup>F924</sup>or who is or was a qualifying person], which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person’s partner or former partner from whom he is not, or where that person has died was not, estranged or divorced;
- (b) any child who is a member of that person’s family or who was such a member and who is a member of the claimant’s family; or
- (c) any young person who is a member of that person’s family or who was such a member and who is a member of the claimant’s family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia [<sup>F927</sup>or who is or was a qualifying person] provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia [<sup>F928</sup>or who is a qualifying person];
- (b) any child who is a member of that person’s family or who was such a member and who is a member of the claimant’s family; or
- (c) any young person who is a member of that person’s family or who was such a member and who is a member of the claimant’s family.

(4) Any payment by a person who is suffering from haemophilia [<sup>F929</sup>or who is a qualifying person], which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child or young person who is or had been a member of that person’s family; and
- (b) the payment is made either—
  - (i) to that person’s parent or step-parent, or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person’s death.

(5) Any payment out of the estate of a person who suffered from haemophilia [<sup>F929</sup>or who was a qualifying person], which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
  - (i) to that person’s parent or step-parent, or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

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(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.]

[<sup>F930</sup>(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund [<sup>F931</sup>and the Eileen Trust].]

#### Textual Amendments

- F923** Sch. 10 para. 22 substituted (11.5.1991) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1991 \(S.I. 1991/1175\)](#), regs. 1(1), **5(8)(a)**
- F924** Words in Sch. 10 para. 22(1)(2) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(8)(a)(i)(ii)**
- F925** Words in Sch. 10 para. 22(1) inserted (14.5.1993) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1993 \(S.I. 1993/1249\)](#), regs. 1(1)(a), **4(5)(a)**
- F926** Words in Sch. 10 para. 22(1) substituted (22.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/963\)](#), regs. 1, **2(3)(4)**
- F927** Words in Sch. 10 para. 22(3) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(8)(a)(iii)(aa)**
- F928** Words in Sch. 10 para. 22(3) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(8)(a)(iii)(bb)**
- F929** Words in Sch. 10 para. 22(4)(5) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(8)(a)(iv)(v)**
- F930** Sch. 10 para. 22(7) added (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(8)(a)(vi)**
- F931** Words in Sch. 10 para. 22(7) added (14.5.1993) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1993 \(S.I. 1993/1249\)](#), regs. 1(1)(a), **4(5)(b)**

[<sup>F932</sup>**23.** The value of the right to receive an occupational [<sup>F933</sup>or personal] pension.]

#### Textual Amendments

- F932** Sch. 10 paras. 22-24 added (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **36(b)**
- F933** Words in Sch. 10 para. 23 inserted (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **21** (with reg. 1(2))

[<sup>F934</sup>**23A.** The value of any funds held under a personal pension scheme or retirement annuity contract.]

#### Textual Amendments

- F934** Sch. 10 para. **23A** inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(10)(b)** (with reg. 8)

[<sup>F932</sup>**24.** The value of the right to receive any rent [<sup>F935</sup>except where the claimant has a reversionary interest in the property in respect of which rent is due.]]

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#### Textual Amendments

**F932** Sch. 10 paras. 22-24 added (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **36(b)**

**F935** Words in [Sch. 10 para. 24](#) added (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(10)(c)** (with reg. 8)

[<sup>F936</sup>**25.** Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling.]

#### Textual Amendments

**F936** Sch. 10 paras. 25-28 added (30.5.1988) by [The Income Support \(General\) Amendment No. 2 Regulations 1988 \(S.I. 1988/910\)](#), regs. 1(1), **3(b)**

[<sup>F936</sup>**26.** Any premises where the claimant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.]

#### Textual Amendments

**F936** Sch. 10 paras. 25-28 added (30.5.1988) by [The Income Support \(General\) Amendment No. 2 Regulations 1988 \(S.I. 1988/910\)](#), regs. 1(1), **3(b)**

[<sup>F937</sup>**27.** Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings whichever is earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.]

#### Textual Amendments

**F937** Sch. 10 para. 27 substituted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **23(a)**

[<sup>F936</sup>**28.** Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is reasonable in the circumstances to enable those repairs or alterations to be carried out and the claimant to commence occupation of the premises.]

#### Textual Amendments

**F936** Sch. 10 paras. 25-28 added (30.5.1988) by [The Income Support \(General\) Amendment No. 2 Regulations 1988 \(S.I. 1988/910\)](#), regs. 1(1), **3(b)**

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[<sup>F938</sup>29. Any payment in kind made by a charity [<sup>F939</sup>or under the Macfarlane (Special Payments) Trust][<sup>F940</sup>, the Macfarlane (Special Payments) (No. 2) Trust [<sup>F941</sup>the Fund or the Independent Living (1993) Fund.]]]

#### Textual Amendments

**F938** Sch. 10 paras. 29-31 added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **26(c)**

**F939** Words in Sch. 10 para. 29 added (31.1.1990) by [The Income-related Benefits Schemes Amendment Regulations 1990 \(S.I. 1990/127\)](#), regs. 1(1), **3(4)**

**F940** Words in Sch. 10 para. 29 substituted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(8)(b)**

**F941** Words in Sch. 10 para. 29 substituted (22.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/963\)](#), regs. 1, **2(5)**

[<sup>F938</sup>30. [<sup>F942</sup>£200 of any payment, or, if the payment is less than £200, the whole of any payment] made under section 2 of the Employment and Training Act 1973 (functions of the Secretary of State) [<sup>F943</sup>or section 2 of the Enterprise and New Towns (Scotland) Act 1990] as a training bonus to a person participating in arrangements for training made under that section [<sup>F944</sup>of the 1973 Act].]

#### Textual Amendments

**F938** Sch. 10 paras. 29-31 added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **26(c)**

**F942** Words in Sch. 10 para. 30 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **24**

**F943** Words in Sch. 10 para. 30 inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, 2, **Sch.**

**F944** Words in Sch. 10 para. 30 inserted (1.4.1991) by [The Enterprise \(Scotland\) Consequential Amendments Order 1991 \(S.I. 1991/387\)](#), arts. 1, **9(h)**

[<sup>F938</sup>31. Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.]

#### Textual Amendments

**F938** Sch. 10 paras. 29-31 added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **26(c)**

[<sup>F945</sup>32. Any payment made by the Secretary of State to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April 1988 but who did not become entitled to income support in respect of a period beginning with that day.]

#### Textual Amendments

**F945** Sch. 10 paras. 32-35 added (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **23(b)**

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[<sup>F945</sup>33. Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983.]

**Textual Amendments**

**F945** Sch. 10 paras. 32-35 added (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **23(b)**

[<sup>F945</sup>34. Any payment made to a juror or a witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.]

**Textual Amendments**

**F945** Sch. 10 paras. 32-35 added (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **23(b)**

[<sup>F946</sup>35. ....]

**Textual Amendments**

**F946** Sch. 10 para. 35 omitted (1.4.1993) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), reg. 1(1)(b), **Sch. para. 6(2)**

[<sup>F947</sup>36. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988 or section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987 (reduction of liability for personal community charge) [<sup>F948</sup>or reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992 (reduction of liability for council tax),] but only for a period of 52 weeks from the date of the receipt of the payment.]

**Textual Amendments**

**F947** Sch. 10 para. 36 added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(a), **23(a)**

**F948** Words in Sch. 10 para. 36 inserted (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), reg. 1(1)(b), **Sch. para. 6(3)**

[<sup>F949</sup>37. Any grant made to the claimant in accordance with a scheme made under section 129 of the Housing Act 1988 or section 66 of the Housing (Scotland) Act 1988 (schemes for payments to assist local housing authority and local authority tenants to obtain other accommodation) which is to be used—

- (a) to purchase premises intended for occupation as his home; or
- (b) to carry out repairs or alterations which are required to render premises fit for occupation as his home

for a period of 26 weeks from the date on which he received such a grant or such longer period as is reasonable in the circumstances to enable the purchase, repairs or alterations to be completed and the claimant to commence occupation of those premises as his home.]

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#### Textual Amendments

**F949** Sch. 10 para. 37 added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **23(b)**

[<sup>F950</sup>**38.**—(1) Any payment or repayment made—

- (a) as respects England and Wales, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988 (travelling expenses and health service supplies);
- (b) as respects Scotland, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988 (travelling expenses and health service supplies);

but only for a period of 52 weeks from the date of receipt of the payment or repayment.

(2) Any payment or repayment made by the Secretary of State for Health, the Secretary of State for Scotland or the Secretary of State for Wales which is analogous to a payment or repayment mentioned in sub-paragraph (1); but only for a period of 52 weeks from the date of receipt of the payment or repayment.]

#### Textual Amendments

**F950** Sch. 10 paras. 38-41 added (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **11(d)** (with reg. 1(2))

[<sup>F950</sup>**39.** Any payment made under regulation 9 to 11 or 13 of the Welfare Food Regulations 1988 (payments made in place of milk tokens or the supply of vitamins), but only for a period of 52 weeks from the date of receipt of the payment.]

#### Textual Amendments

**F950** Sch. 10 paras. 38-41 added (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **11(d)** (with reg. 1(2))

[<sup>F950</sup>**40.** Any payment made either by the Secretary of State for the Home Department or by the Secretary of State for Scotland under a scheme established to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of receipt of the payment.]

#### Textual Amendments

**F950** Sch. 10 paras. 38-41 added (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **11(d)** (with reg. 1(2))

[<sup>F950</sup>**41.** Any arrears of special war widows payment which is disregarded under paragraph 47 of Schedule 9 (sums to be disregarded in the calculation of income other than earnings) [<sup>F951</sup>or of any amount which is disregarded under paragraph 54, 55 or 56 of that Schedule], but only for a period of 52 weeks from the date of receipt of the arrears.]

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#### Textual Amendments

**F950** Sch. 10 paras. 38-41 added (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **11(d)** (with reg. 1(2))

**F951** Words in Sch. 10 para. 41 inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **33(a)**

[<sup>F952</sup>**42.** Any payment (other than a training allowance, or a training bonus under section 2 of the Employment and Training Act 1973) made, whether by the Secretary of State or by any other person, under the Disabled Persons (Employment) Act 1944 or in accordance with arrangements made under section 2 of the Employment and Training Act 1973 to assist disabled persons to obtain or retain employment despite their disability.]

#### Textual Amendments

**F952** Sch. 10 paras. 42, 43 added (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **9(3)** (with reg. 1(2))

[<sup>F952</sup>**43.** Any payment made by a local authority under section 3 of the Disabled Persons (Employment) Act 1958 to homeworkers assisted under the Blind Homeworkers' Scheme.]

#### Textual Amendments

**F952** Sch. 10 paras. 42, 43 added (6.4.1992) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), regs. 1(1), **9(3)** (with reg. 1(2))

[<sup>F953</sup>**44.** Any sum of capital administered on behalf of a person under the age of 18 by the High Court under the provisions of Order 80 of the Rules of the Supreme Court, the County Court under Order 10 of the County Court Rules 1981, or the Court of Protection, where such sum derives from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents.

#### Textual Amendments

**F953** Sch. 10 paras. 44, 45 added (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **33(b)**

**45.** Any sum of capital administered on behalf of a person under the age of 18 in accordance with an order made under Rule 43.15 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 or under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment) 1965, or under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of the Ordinary Cause Rules, where such sum derives from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents.]

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#### Textual Amendments

**F953** Sch. 10 paras. 44, 45 added (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **33(b)**

[<sup>F954</sup>**46.** Any payment to the claimant as holder of the Victoria Cross or George Cross.]

#### Textual Amendments

**F954** Sch. 10 para. 46 added (8.4.1996) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/462\)](#), regs. 1(2), **11(1)**

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for various matters concerning entitlement to, and the amount of, income support.

Part I contains general provisions affecting the citation, commencement and interpretation of the Regulations (regulations 1 to 3).

Part II prescribes the circumstances in which a person's entitlement is to continue notwithstanding his absence from Great Britain; provide for what is to be treated as remunerative work and relevant education; specifies the circumstances in which a person is not required to be available for employment, or is to be treated or not treated as in remunerative work, available for employment, or in relevant education; and also provides for a person under the age of 18 to be registered for employment (regulations 4 to 13).

Part III makes provision in respect of children and young persons and prescribes, for the purpose of determining the members of a family, the circumstances in which a person is to be treated as responsible for another or as a member of the same household (regulations 14 to 17).

Part IV provides for a claimant's applicable amount (by reference to which the amount of his income support is calculated) to consist of the following: a personal allowance for the claimant and members of his family; where applicable, a family, lone parent, pensioner or disability premium and an amount in respect of mortgage interest payments or other prescribed housing costs. It also makes special provision in the case of polygamous marriages, boarders, certain cases of disqualification from unemployment, and other special cases (regulations 17 to 22).

Part V contains provisions for the calculation of income and capital. Chapters II to V make provision for income not expressly disregarded to be taken into account on a weekly basis; define earnings and prescribe the manner in which earnings and other income are to be calculated; they also prescribe the circumstances in which capital is to be treated as income and a person is to be treated as possessing income which he in fact does not possess.

Chapter VI makes provision for the calculation of capital; sets the capital limit over which a person is not to be entitled to benefit at £6,000 and provides for a weekly tariff income on capital over £3,000 and under that limit at a rate of £1 for every £250. Chapters VII and VIII make special provision in relation to the calculation of payments made by liable relatives and in respect of students (regulations 23 to 69).



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Part VI makes provision for persons from abroad and for persons who are treated as possessing earnings who could not otherwise qualify for income support to be entitled to income support in cases of hardship; and for determining their applicable amount and income and capital (regulations 70 to 72).

These regulations are made before the expiry of 12 months from the commencement of provisions under which they are made: they are accordingly exempt, by section 61(5) of the Social Security Act 1986, from reference to the Social Security Advisory Committee and have not been so referred.

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