
STATUTORY INSTRUMENTS

1987 No. 1967

The Income Support (General) Regulations 1987

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) The income and capital of a claimant's partner and, subject to paragraph (2) and to regulation 44 (modifications in respect of children and young persons), 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.

(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) 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.

Treatment of charitable or voluntary payments

24.—(1) Subject to paragraph (5), any charitable or voluntary payment, other than one which is or is due to be made at regular intervals or is one to which regulation 44(2) (modifications in respect of children and young persons) applies, made to the claimant on or after the date of claim shall be calculated in accordance with the following provisions of this regulation; and for the purposes of this regulation any such payment made to a member of the claimant's family or to a person whose income and capital 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) shall be treated as a payment made to the claimant and shall be disregarded in calculating the income or capital of that member or that person.

(2) The first £250, whether in aggregate or otherwise, of any such payments made in the period of 52 weeks beginning with the first day of the benefit week in which the first payment is made shall be taken into account under Chapter VI of this Part as capital and to the extent that it is not a payment of capital shall be treated as capital.

(3) Any such payments in the period of 52 weeks in excess of £250 shall be taken into account under Chapter V of this Part as income and to the extent that it is not a payment of income shall be treated as income.

(4) In the case of a claimant who continues to be in receipt of income support at the end of the period of 52 weeks, the foregoing provisions of this regulation 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.

(5) This regulation shall not apply to a person to whom section 23 of the Act (trade disputes) applies or to a member of his family for so long as that section applies to that person.

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).

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).

Disregard of fractions

27. Where any income or capital calculated in accordance with this Part includes a fraction of a penny that fraction shall be disregarded.

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).

(2) For the purposes of paragraph (1) “income” includes income derived under regulations 24 and 41 to 43 (treatment of charitable or voluntary payments, capital treated as income, notional income and notional earnings of seasonal workers).

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

29.—(1) Except where regulation 33 applies (weekly amount of charitable or voluntary payment) 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 paragraph (3), 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 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 or, as the case may be, 9 (earnings and other income to be disregarded) 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—

- (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).

(4) In a case to which paragraph (3) applies, any payment to which regulation 35(1)(b) or (c) (earnings of employed earners) applies shall be taken into account before a payment to which regulation 35(1)(d) applies but after any earnings normally derived from the employment.

(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.

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 52 weeks; 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 of weeks 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.

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, sickness or invalidity benefit, or severe disablement allowance under the Social Security Act(1) shall be treated as paid on the day of the benefit week in respect of which it is paid.

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 paragraphs (2) to (5) and regulation 34 (incomplete benefit weeks), 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.

(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.

(1) See sections 12(1)(a) to (c), 14 to 16 and 36 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), section 18(1) and 65, Schedule 4, paragraph 39, the Social Security Act 1979 (c. 18) 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; section 15 was amended by the Social Security Pensions Act 1975 section 65, Schedule 4, paragraph 40, the Social Security Act 1979 section 21, Schedule 1, paragraph 1, Schedule 3, paragraph 7, the Social Security and Housing Benefits Act 1982 section 48, Schedule 4 paragraph 10; and the Social Security Act 1986 (c. 50) section 86 Schedule 10 Part V paragraph 83; section 15A was inserted by section 18(3) of the Social Security Act 1985 (c. 53); section 16 was amended by the Social Security Act 1979, Schedule 1, paragraph 10 and the Social Security Act 1985 section 9(1) and modified for certain purposes by the Social Security Act 1986 (c. 50) section 4; section 36 was substituted by the Health and Social Security Act 1984, section 11 and subsection 4A was added by the Social Security Act 1985 Schedule 4, paragraph 3.

(4) In the case of a payment of—

- (a) unemployment benefit, sickness or invalidity benefit, or severe disablement allowance under the Social Security Act, the amount to be taken into account for the relevant days shall be the amount of benefit paid 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.

Weekly amount of charitable or voluntary payment

33.—(1) Subject to paragraph (2), the weekly amount of any charitable or voluntary payment which is to be treated as income under regulation 24(3) (treatment of charitable or voluntary payments) shall be determined as follows—

- (a) in a case where the first such payment exceeds the annual limit of £250, the excess shall be divided by 52; and the resulting amount treated as weekly income for a period of 52 weeks beginning on the date on which that payment was made;
- (b) in a case where any subsequent payment in aggregate with earlier payments first exceeds that limit, the excess shall be divided by the number equal to the number of weeks (including any part of a week) in the interval beginning with the date of that payment to the end of the period of 52 weeks; and the resulting amount treated as weekly income for each week in that interval; and
- (c) any payment made after that in either sub-paragraph (a) or (b) shall be divided by the number equal to the number of weeks (including any part of a week) in the interval beginning with the date of that payment to the end of the period of 52 weeks; and the resulting amount treated as weekly income for each week in that interval.

(2) Where the date on which the payment is made is not the first day of the benefit week in which it is made it shall be treated as paid on the first day of that benefit week or the first succeeding benefit week in which it is practicable to take the weekly amount of the payment into account.

Incomplete weeks of benefit

34.—(1) Where a claim for income support is made for a period (the relevant period) which is not a complete benefit week and a payment of income is to be taken into account in that period, for the purposes of calculating the amount to be taken into account—

- (a) the claimant shall be treated as if he had a benefit week beginning seven days before the end of the relevant period; and
- (b) except where paragraph (2) or (3) applies, the amount to be taken into account in the relevant period shall be determined—
 - (i) by multiplying the weekly amount of the payment determined under regulation 32(1) (calculation of weekly amount of income) less any sum which would fall to be disregarded from that amount under Schedule 8 or, as the case may be, 9 (earnings and other income to be disregarded) by the number equal to the number of days in the relevant period; and
 - (ii) by dividing the product by 7.
- (2) Where entitlement to income support would otherwise end before the last day of a benefit week (the relevant week) and a payment of income is to be taken into account in that week, for the purposes of calculating the amount to be taken into account in the relevant week—
 - (a) the claimant shall be treated as if he had a benefit week beginning seven days before the last day of the relevant week; and
 - (b) except where paragraph (3) applies, the amount to be taken into account shall be determined—
 - (i) by multiplying the weekly amount of the payment determined under regulation 32(1) less any sum which would fall to be disregarded from that amount under Schedule 8 or, as the case may be, 9 by the number equal to the number of days in the relevant week in respect of which there is entitlement to income support; and
 - (ii) by dividing the product by 7.
- (3) The amount of any unemployment benefit, sickness or invalidity benefit, or severe disablement allowance under the Social Security Act to be taken into account under paragraph (1) or (2) shall be the amount of benefit payable in respect of those days for which income support is payable.

CHAPTER III

employed earners

Earnings of employed earners

35.—(1) Subject to paragraph (2) “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 or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;
- (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, and for so long as, section 23 of the Act (trade disputes) applies;
- (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—
 - (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(2) (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(3) (certain sums to be earnings for social security purposes).
- (2) "Earnings" shall not include—
- (a) any payment in kind;
 - (b) 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;
 - (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.

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(4); and
- (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.

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

(2) 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.

(3) 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).

(4) 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.

section 2 of the Employment and Training Act 1973⁽⁵⁾ to the claimant for the purpose of assisting him in carrying on his business.

(2) “Earnings” shall not include, where a claimant is employed in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge except where the claimant is a seasonal worker to whom regulation 43 (notional earnings of seasonal workers) applies and the payment is due during the period of his normal employment.

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⁽⁶⁾, 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) one-half of any qualifying premium payable.

(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) one-half of any qualifying premium payable.

(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;

⁽⁵⁾ 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).

⁽⁶⁾ S.I. 1975/529.

- (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) one-half of any qualifying premium payable.
- (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.
- (12) In this regulation “qualifying premium” means any premium or other consideration payable under an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision for the claimant of a life annuity in old age or the provision of an annuity for his partner or for any one or more of his dependants and in respect of which relief from income tax may be given.

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 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)(7) 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, 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—

- (a) the amount of Class 2 contributions payable under section 7 (1) or, as the case may be, (4) of the Social Security Act(8) except where the claimant's chargeable income is less than the amount for the time being specified in section 7 (5) of that Act(9) (small earnings exception); and
 - (b) the amount of Class 4 contributions (if any) which would be payable under section 9 of that Act(10) (contributions recoverable under Taxes Acts) in respect of profits or gains equal to the amount of that income.
- (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.

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 (2) and (3), be his gross income and any capital treated as income under regulations 24(3), 41 and 44 (treatment of charitable and voluntary payments, 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.

(7) 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.

(8) Section 7 (1) was amended by section 2 (4) of the Education (School-Leaving Dates) Act 1976 (c. 5), section 17 (1) of the Health and Social Security Act 1984 (c. 48) article 3 of S.I. 1986/25 and article 3 of S.I. 1987/46.

(9) Section 9 was amended by sections 4 and 65 of, and Schedule 5 to, the Social Security Pensions Act 1975 (c. 60), the Social Security (Contributions) Act 1982 (c. 2) section 1 and by S.I. 1986/25.

(10) Section 7 (5) was amended by article 3 of S.I. 1986/25 and S.I. 1987/46.

(3) Where the payment of any benefit under the benefit Acts⁽¹¹⁾ is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

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

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 £6,000, 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 and for so long as it applies, any payment under section 1 of the Child Care Act 1980⁽¹²⁾ (duty of local authorities to promote welfare of children) or, as the case may be, section 12 of the Social Work (Scotland) Act 1968⁽¹³⁾ (general social welfare) shall be treated as income.

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⁽¹⁴⁾ (rates of child benefit),

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 it would be so acquired.

(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⁽¹⁵⁾ (duplication and prescribed payments or maintenance payments) and not made on or before the date prescribed in relation to it,

shall be treated as possessed by the claimant.

(4) Any payment of income made—

⁽¹¹⁾ The benefit Acts are specified in section 84(1) of the Social Security Act 1986 (c. 50).

⁽¹²⁾ 1980 c. 5.

⁽¹³⁾ 1968 c. 49.

⁽¹⁴⁾ S.I. 1976/1267; relevant amending instruments are S.I. 1980/110, 1986/1172 and 1987/45.

⁽¹⁵⁾ S.I. 1987/491.

- (a) to a third party 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 war widow's pension, as possessed by that member if it is paid to any member of that family;
 - (ii) in any other case, as possessed by that member to the extent that it is used for the food, clothing, footwear, fuel, rent or rates for which housing benefit is payable, or any housing costs to the extent that they are met under regulations 17(e) or 18(f) (housing costs), of any member of that family;
- (b) to 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 member to the extent that it is kept 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.

(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 voluntary body or is a volunteer if the adjudication officer is satisfied 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 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, the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis;
- (b) an amount in respect of primary Class 1 contributions payable under the Social Security Act in respect of those earnings; and
- (c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

Notional earnings of seasonal workers

43.—(1) Where the claimant is a seasonal worker or, if he is one of a couple, he or his partner is a seasonal worker (but not both), and—

- (a) a claim for income support is made in respect of any day in the claimant's off-season or, as the case may be, in his partner's off-season; and
- (b) his or, as the case may be, his partner's net earnings in his last period of normal employment less any earnings for any week in that period which have been taken into account in calculating entitlement to income support, exceeded three times the total of the amounts for that period specified in head (i) or, as the case may be, (ii) of sub-paragraph (a) and, where applicable, sub-paragraph (b) of paragraph (2),

the amount by which those earnings exceeded that total shall be divided by the number equal to the number of weeks (including any part of a week) in his or, as the case may be, his partner's off-season and the amount so obtained shall be treated as earnings possessed by the claimant or his partner in each of those weeks.

(2) The amounts specified for the purposes of paragraph (1)(b) are—

- (a) either—
 - (i) in a case where the claimant is one of a couple, the personal allowance for a couple; or
 - (ii) in a case where he is not one of a couple, the personal allowance for a single claimant not less than age 25; and
- (b) in respect of each child or young person who is a member of the claimant's family, the amount which is equal to the applicable amount for a child under age 11.

(3) Where the claimant and his partner are seasonal workers and both have started their, or only one has started his, off-season paragraph (1) shall apply to the claimant or, where his partner is the only one whose off-season has started, to his partner as if he were the only seasonal worker until the end of his off-season and thereafter to the other member subject to the modifications in paragraphs (4) to (6).

(4) The other member's last period of normal employment shall be—

- (a) in a case where that member's normal employment has ceased, the period beginning with the start of the employment of that member and ending with the last day of that employment;
- (b) in a case where that member's normal employment has not ceased, the period beginning with the start of the employment of that member and ending with—
 - (i) the day before the start of the off-season of his partner; or
 - (ii) the date of claim for income support, whichever is the later;

(5) The period of the other member's off-season shall be—

- (a) in a case where that member's normal employment has ceased, the period beginning with the start of his off-season and ending with the day before he is to resume normal employment; or
- (b) in a case where that member's normal employment has not ceased, the period beginning with the date on which the off-season of either member first starts or, as the case may be, the date of claim for income support whichever is later and ending with the day before that on which either member is first to resume normal employment.

(6) The other member's net earnings in his last period of normal employment as determined under paragraph (4), less—

- (a) any earnings for any week in that period which have been taken into account in calculating entitlement to income support; and

(b) in so far as any week in that period—

- (i) does not coincide with a week in his partner's period of normal employment, 3 times the total of the amounts for that week specified for the purposes of paragraph (1)(b);
- (ii) does coincide with a week in his partner's period of normal employment, the extent (if any) by which the amount so specified has not been taken into account in the calculation of his partner's notional earnings,

shall be divided by the number equal to the number of weeks (including any part of a week) in that member's off-season as determined under paragraph (5) and the amount so obtained shall be treated as earnings possessed by that member in each of those weeks.

(7) In this regulation, the expressions "normal employment", "off-season" and "seasonal worker" have the meanings assigned to those expressions in regulation 21 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983⁽¹⁶⁾ (additional condition with respect to receipt of unemployment benefit) except that the expression "employment" in that regulation shall be construed as if it included a reference to employment as a self-employed earner.

(8) Where a claimant or his partner is treated as possessing any earnings under this regulation the foregoing provisions of this Part, except regulation 38(2) in so far as it applies to paragraph 3 of Schedule 8 (earnings to be disregarded), shall apply for the purposes of calculating those earnings as if a payment had actually been made and as if they were actual earnings which he does possess.

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, except where otherwise provided, 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⁽¹⁷⁾ (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⁽¹⁸⁾ (power of education authority to assist persons).

(3) Where a child or young person—

⁽¹⁶⁾ S.I. 1983/1598.

⁽¹⁷⁾ 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.

⁽¹⁸⁾ 1980 c. 44 section 50 was amended by the Education (Scotland) Act 1981 (c. 58) section 2.

- (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 the foregoing provisions 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.

(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, except where otherwise provided, 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.

CHAPTER VI

capital

Capital limit

45. For the purposes of section 22 (6) of the Act as it applies to income support (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £6,000.

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 regulations 24 (2) and 48 (treatment of charitable or voluntary payments and 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.

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.

Income treated as capital

48.—(1) Any annual bounty derived from employment to which paragraph 7 of Schedule 8 applies 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) 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, or 12 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.

(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.

(6) For so long as section 23 of the Act (trade disputes) applies to a person, paragraph (5) shall not apply to him and, if he is a person to whom sub-section (8) of that section applies, that paragraph shall not apply until the end of the period specified in that sub-section.

(7) Any payment under section 30 of the Prison Act 1952⁽¹⁹⁾ (payments for discharged prisoners) or allowance under section 17 of the Prisons (Scotland) Act 1952⁽²⁰⁾ (allowances to prisoners on discharge) shall be treated as capital.

(8) Any payment made by a local authority which represents arrears of payments under section 34 (6) or, as the case may be, section 50 of the Children Act 1975⁽²¹⁾ (contributions to a custodian towards the cost of accommodation and maintenance of a child) shall be treated as capital.

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.

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,

⁽¹⁹⁾ 1952 c. 52; section 30 was substituted by section 66 (3) of the Criminal Justice Act 1967 (c. 80).

⁽²⁰⁾ 1952 c. 61.

⁽²¹⁾ 1975 c. 72; as amended by section 64 of the Domestic Proceedings and Magistrates Courts Act 1978 (c. 22).

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

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.

(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,

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 it would be so acquired.

(3) Any payment of capital made

- (a) to a third party 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 member if it is paid to any member of the family;
 - (ii) in any other case, as possessed by that member to the extent that it is used for the food, clothing, footwear, fuel, rent or rates for which housing benefit is payable, or any housing costs to the extent that they are met under regulation 17 (e) and 18 (f) (housing costs), of any member of that family;
- (b) to 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 member to the extent that it is kept by him or used 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—

- (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.

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 to the whole beneficial interest therein in an equal share.

Calculation of tariff income from capital

53.—(1) 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 £6,000.

(2) Notwithstanding paragraph (1), 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 paragraph (1), capital includes any income treated as capital under regulations 24 (2), 48 and 60 (charitable or voluntary payments, income treated as capital and liable relative payments treated as capital).

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 it would be so acquired; 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;
- (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.

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.

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—

- (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).

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;
- (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 amount prescribed in Schedule 2 (applicable amount) in respect of each child or young person and any family and lone parent premium;

(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 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.

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.

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.

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.

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, a higher national diploma of the Business & Technician 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, a national diploma of the Business & Technician Education Council or the Scottish Vocational Education Council, a general certificate of education (advanced level) a Scottish certificate of education (higher grade) 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⁽²²⁾ (interpretation), an education authority as defined in section 135(1) of the Education (Scotland) Act⁽²³⁾ (interpretation), an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986⁽²⁴⁾, any body which is a research council for the purposes of the Science and Technology Act 1965⁽²⁵⁾ 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;

“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;

⁽²²⁾ 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).

⁽²³⁾ 1980 c. 44.

⁽²⁴⁾ S.I. 1986/594 (NI 3).

⁽²⁵⁾ 1965 c. 4.

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

"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 to the end;
- (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, 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;

"periods of experience" has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1987⁽²⁶⁾;

"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;

"student" means a person 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 throughout any period of term or vacation within it, until the end 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.

Calculation of grant income

62.—(1) The amount of a student's grant income to be taken into account shall, subject to paragraph (2), 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, 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 £210 towards such costs;
- (h) intended to meet travel expenses incurred as a result of his attendance on the course.

(3) A student's grant income 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.

(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.

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 regulation 62(2)(h) (calculation of grant income) falls short of the amount included in the standard maintenance grant to meet travel expenses.

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 regulation 62(2)(g) and (h) (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
- (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 regulation 62(2)(g) and (h).

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 shall only be disregarded thereunder if, and 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 £5.

Other amounts to be disregarded

66.—(1) For the purposes of ascertaining income other than grant income and covenant income, 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), 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.

Disregard of contribution

67. Where the claimant or his partner is a student and the income of one has been taken into account for the purpose of assessing a contribution to the student's grant, an amount equal to the contribution shall be disregarded for the purpose of calculating the income of the one liable to make that contribution.

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.

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.