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STATUTORY INSTRUMENTS

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**1987 No. 1971**

**The Housing Benefit (General) Regulations 1987**

**PART VI**

**INCOME AND CAPITAL**

**CHAPTER I**

**general**

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

**19.—**(1) The income and capital of a claimant's partner and, subject to paragraph (2) and to regulation 36 (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 or estimated 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 29(2) and 31(2), so far as they relate to paragraphs 1 to 10 of Schedule 3 (sums to be disregarded in the calculation of earnings), and regulation 34(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.

**Circumstances in which income of non-dependant is to be treated as claimant's**

**20.—**(1) Where it appears to the appropriate authority that a non-dependant and the claimant have entered into arrangements in order to take advantage of the housing benefit scheme and the non-dependant has more capital and income than the claimant, that authority shall, except where the claimant is on income support, treat the claimant as possessing capital and income belonging to that non-dependant and, in such a case, shall disregard any capital and income which the claimant does possess.

(2) Where a claimant is treated as possessing capital and income belonging to a non-dependant under paragraph (1) the capital and income of that non-dependant 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 that non-dependant.

## CHAPTER II

### income

#### Calculation of income on a weekly basis

**21.—**(1) Subject to regulations 26 (disregard of changes in tax, contributions etc), and 69 and 70 (calculation of weekly amounts and rent or rate free periods) for the purposes of section 20(7)(c) of the Act (conditions of entitlement to housing benefit) the income of a claimant shall be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be his average weekly income over the benefit period in accordance with this Chapter and Chapters III to V of this Part; and
- (b) by adding to that amount the weekly income calculated under regulation 45 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) “income” includes income derived under regulations 27(3), 34 and 35 (charitable or voluntary payments, capital treated as income and notional income).

#### Average weekly earnings of employed earners

**22.—**(1) Where a claimant’s income consists of earnings from employment as an employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment—

- (a) over a period immediately preceding the benefit week in which the claim is made or treated as made and being a period of—
  - (i) 5 weeks, if he is paid weekly; or
  - (ii) 2 months, if he is paid monthly; or
- (b) whether or not sub-paragraph (a)(i) or (ii) applies, where a claimant’s earnings fluctuate, over such other period preceding the benefit week in which the claim is made or treated as made as may, in any particular case, enable his average weekly earnings over the benefit period to be estimated more accurately.

(2) Where the claimant has been in his employment for less than the period specified in paragraph (1)(a)(i) or (ii)—

- (a) if he has received any earnings for the period that he has been in that employment and those earnings are likely to represent his average weekly earnings from that employment his average weekly earnings shall be estimated by reference to those earnings;
- (b) in any other case, the appropriate authority shall require the claimant’s employer to furnish an estimate of the claimant’s likely weekly earnings over such period as the appropriate authority may require and the claimant’s average weekly earnings shall be estimated by reference to that estimate.

(3) Where the amount of a claimant’s earnings changes during a benefit period the appropriate authority shall estimate his average weekly earnings by reference to his likely earnings from the employment over the remainder of the benefit period.

(4) For the purposes of this regulation the claimant’s earnings shall be calculated in accordance with Chapter III of this Part.

### **Average weekly earnings of self-employed earners**

**23.**—(1) Where a claimant's income consists of earnings from employment as a self-employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment over such period as is appropriate in order that his average weekly earnings over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks.

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

### **Average weekly income other than earnings**

**24.**—(1) A claimant's income which does not consist of earnings shall, except where paragraph (2) or regulation 27(4) (weekly amount of charitable or voluntary payment) applies, be estimated over such period as is appropriate in order that his average weekly income over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks; and nothing in this paragraph shall authorise an authority to disregard any such income other than that specified in Schedule 4.

(2) The period over which any benefit under the benefit Acts<sup>(1)</sup> is to be taken into account shall be the period in respect of which that benefit is payable.

(3) For the purposes of this regulation income other than earnings shall be calculated in accordance with Chapter V of this Part.

### **Calculation of weekly income**

**25.** For the purposes of regulations 22 to 24 (average weekly income), 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 any other case, by dividing the amount of the payment by the number equal to the number of days in the period to which it relates and multiplying the quotient by 7.

### **Disregard of changes in tax, contributions etc.**

**26.** In calculating the claimant's income the appropriate authority may disregard any legislative change—

- (a) in the basic or other rates of income tax;
- (b) in the amount of any personal tax relief;
- (c) in the rates of social security contributions payable under the Social Security Act or in the lower earnings limit or weekly earnings figures for Class 1 contributions under that Act;
- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under that Act,

for a period not exceeding 30 benefit weeks beginning with the benefit week immediately following the date from which the change is effective.

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

**Treatment of charitable or voluntary payments**

**27.**—(1) Any charitable or voluntary payment, other than one which is or is due to be made at regular intervals or one which is made by a person for the maintenance of any member of his family or of his former partner or of his children, 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 19(3) (calculation of income and capital of members of the 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 date on which the first payment is made shall be taken into account as capital under Chapter VI of this Part 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 as income under Chapter V of this Part and to the extent that it is not a payment of income shall be treated as income.

(4) The weekly amount of any charitable or voluntary payment which is to be taken into account under paragraph (3) as income shall be determined as follows—

- (a) in a case where the first payment exceeds the 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 specified 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.

(5) In the case of a claimant who continues to be in receipt of housing benefit 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 from the date on which the first payment is made after the end of the previous period of 52 weeks.

**CHAPTER III****employed earners****Earnings of employed earners**

**28.**—(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 4 weeks after termination or interruption of the employment;
  - (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 and compensation for unfair dismissal);
  - (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);
  - (i) any statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982(4) or statutory maternity pay under Part V of the Act.
- (2) Earnings shall not include—
- (a) any payment in kind;
  - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - (c) any occupational pension.

### Calculation of net earnings of employed earners

**29.**—(1) For the purposes of regulation 22 (average weekly earnings of employed earners), the earnings of a claimant derived or likely to be 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 11 of Schedule 3.

(3) For the purposes of paragraph (1) net earnings shall, except where paragraph (4) applies, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax;
  - (ii) primary Class 1 contributions under the Social Security Act(5); and
- (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.

(2) 1978 c. 44; section 68(2) was amended by section 21 Schedule 3 paragraph 21 of the Employment Act 1982 (c. 46); section 71(2) was amended by sections 5 and 21, Schedule 3 paragraph 22 and Schedule 4 of the Employment Act 1982.

(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) 1982 c. 24.

(5) See sections 1(2) and 4 of the Social Security Act 1975 (c. 14); section 4 was amended by the Social Security Pensions Act 1975 (c. 60), Schedule 4 paragraph 36(a), 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) and the Social Security Act 1986 (c. 50), section 74(1)(a) and (2) and Schedule 10, paragraph 104, article 2 of S.I. 1986/25 and article 2 of S.I. 1987/46.

(4) Where the earnings of a claimant are estimated under paragraph (2) of regulation 22 (average weekly earnings of employed earners), his net earnings shall be calculated by taking into account those earnings over the assessment period, 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 in which the claim was made 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)(6) as is appropriate to his circumstances but, if the assessment period is less than a year, the amount of the personal relief deductible under this sub-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 pensions scheme.

## CHAPTER IV

### self-employed earners

#### Earnings of self-employed earners

**30.** “Earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and shall include any allowance paid under section 2 of the Employment and Training Act 1973(7) to the claimant for the purpose of assisting him in carrying on his business.

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

**31.—(1)** For the purposes of regulation 23 (average weekly 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(8), 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 32 (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 11 of Schedule 3.

(6) 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, sub-section (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 and the Finance Act 1985 section 36. Sub-section (1B) was added by the Finance (No. 2) Act 1975 section 31 and amended by the Finance Act 1985 section 36. 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) was 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 section 24 paragraph 2 and the Finance Act 1980 (c. 48) section 24.

(7) 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).

(8) S.I. 1975/529.

(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 assessment period less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred 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 32 (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 assessment period less, subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the 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;
- (d) any loss incurred before the beginning of the assessment period;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment; and
- (g) any debts, except bad debts proved to be such, but this sub-paragraph shall not apply to any expenses incurred in the recovery of a debt.

(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) The appropriate authority shall refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where it is not satisfied given the nature and the amount of the expense 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 value added tax paid over value added tax received in the assessment period;
  - (ii) any income expended in the repair of an existing business 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 32 (deduction of tax and contributions for self-employed earners); and
- (b) one-half of any qualifying premium payable.

(10) 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.

(11) 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 for income tax may be given.

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

**32.**—(1) The amount to be deducted in respect of income tax under regulation 31(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 in the year of assessment in which the claim was made 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(9) (personal relief) as is appropriate to his circumstances; but, if the assessment period 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 31(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(10) except where the claimant’s chargeable income is less than the amount for the time being specified in section 7(5) of that Act(11) (small earnings exception); and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 9 of that Act(12) (Class 4 contributions recoverable under Tax 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 31;
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

(9) 1970 c. 10.

(10) 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), and article 3 of S.I. 1986/25 and article 3 of S.I. 1987/46.

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

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



## CHAPTER V

### other income

#### Calculation of income other than earnings

**33.—**(1) For the purposes of regulation 24 (average weekly 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 regulation 27(3) and 34 (charitable or voluntary payments and capital treated as income).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1), any sum, where applicable, specified in Schedule 4.

(3) Where the payment of any benefit under the benefit Acts 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 28(2) applies (payments not earnings).

#### Capital treated as income

**34.—**(1) Any capital payable by instalments which are outstanding at the date on which the claim is made or treated as made, or, at 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 exceeds £6,000, be treated as income.

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

#### Notional income

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

(2) 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 would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by the claimant but only from the date on which it could be expected to be acquired were an application made.

(3) Any payment of income 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 as possessed by that member to the extent that it is used for his food, clothing, footwear, fuel, eligible rent or rates or both;
- (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.

(4) Where a claimant is in receipt of any benefit (other than housing benefit) under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the appropriate authority shall treat the claimant as possessing such benefit at the altered rate—

- (a) in a case in which the claimant's weekly amount of eligible rent or, as the case may be, rates falls to be calculated in accordance with regulation 69(2)(b) or, as the case may be, (3)(b) (calculation of weekly amounts), from 1st April in that year;
- (b) in any other case, from the first Monday in April in that year,

to the date on which the altered rate is to take effect.

(5) 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; and
- (c) the appropriate authority is not satisfied that the means of that person are insufficient for him to pay or to pay more for the service,

the appropriate authority shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary body or is a volunteer if the appropriate authority is satisfied that it is reasonable for him to provide his services free of charge.

(6) 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.

(7) Where a claimant is treated as possessing any earnings under paragraph (5) 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 29 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account those 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 in which the claim was made 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 assessment period is less than a year the amount of the personal relief deductible under this sub-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.

### **Modifications in respect of child and young person**

**36.**—(1) Where the income of a child or young person calculated in accordance with the foregoing provisions of this Part exceeds the amount included under Schedule 2 in the calculation of the claimant's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any, the excess shall not be treated as income of the claimant.

(2) Where the capital of a child or young person, if calculated in accordance with Chapter VI 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.

(3) In calculating the net earnings or net profit of a child or young person there shall be disregarded any sum specified in paragraphs 13 and 14 (in addition to any sum which falls to be disregarded under paragraphs 11 and 12) of Schedule 3.

(4) Any income of a child or young person which is to be disregarded under Schedule 4 shall be disregarded in such manner as to produce the result most favourable to the claimant.

## CHAPTER VI

### capital

#### Capital limit

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

#### Calculation of capital

**38.—**(1) For the purposes of Part II of the Act as it applies to housing benefit, 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 27(2) and 40 (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 5.

#### Disregard of capital of child or young person

**39.** 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

**40.—**(1) Any annual bounty derived from employment to which paragraph 6 of Schedule 3 applies shall be treated as capital.

(2) 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 28(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4, 7 or 13 of Schedule 5, 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) 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.

#### Calculation of capital in the United Kingdom

**41.** 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 date on which the claim is made or treated as made, or 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**

**42.** Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—

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

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

**Notional Capital**

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

(2) Except in the case of—

- (a) a discretionary trust; or
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 5,

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 could be expected to be acquired were an application made.

(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 as possessed by that member to the extent that it is used for his food, clothing, footwear, fuel, eligible rent or rates or both;
- (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 may be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 38 (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 (3) 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**

**44.** Except where a claimant possesses capital which is disregarded under regulation 43(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**

**45.—**(1) Where the claimant's capital calculated in accordance with this Part exceeds £3,000 it shall be treated as equivalent to a weekly tariff 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 tariff income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulations 27(2) and 40 (charitable or voluntary payments and income treated as capital).